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Right to adequate housing

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report submitted by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, Raquel Rolnik, pursuant to Human Rights Council resolution 6/27.

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Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

Summary

The present report, submitted in accordance with Human Rights Council resolution 6/27, is the third annual report to the General Assembly of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context. The report analyses the specific legal entitlements and protections granted to migrants with respect to the right to housing in international treaties and other international legal instruments. To shed light on the reach of the applicable legal provisions and their applicability to migrants, the report examines the interpretation of the relevant human rights monitoring mechanisms. Furthermore, the report assesses the challenges faced by documented and undocumented migrants in gaining access to adequate housing, paying particular attention to the situation of migrant workers in low-skilled and informal jobs, undocumented migrants, migrants belonging to minority groups and migrant women and children. Finally, the report explores some regulations and public policies affecting the right to adequate housing of migrants and provides examples of good practices. To conclude, the report offers some recommendations addressed to Governments on how to guarantee and improve the enjoyment of the right of migrants to adequate housing.

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I. Introduction

1. The present report, submitted in accordance with Human Rights Council resolution 6/27, is the third annual report to the General Assembly since the current Special Rapporteur, Raquel Rolnik, assumed her functions on 1 May 2008.

2. Since the submission of her previous report, the Special Rapporteur has undertaken two country missions and held numerous consultations with a wide range of stakeholders. The Special Rapporteur visited the United States of America from 22 October to 8 November 2009 and Croatia from 4 to 13 July 2010. She held consultations and participated in conferences and seminars with representatives of national Governments, United Nations agencies and other multilateral organizations and non-governmental organizations. She also undertook several activities under her "dissemination project", including the preparation of a guide and leaflet on development-based evictions, which is being distributed. During the thirteenth session of the Human Rights Council, the Special Rapporteur presented her annual report, on the impact of mega-events on the realization of human rights (A/HRC/13/20); her report on her mission to the United States of America (ibid., Add.4); a report on her mission to Maldives (ibid., Add.3); a follow-up report to country recommendations on Brazil, Cambodia and Kenya (ibid., Add.2); and a report on communications to and from States (ibid., Add.1).

3. In the present report, the Special Rapporteur focuses on the realization of the right of international migrants to adequate housing, an issue that has attracted interest and concern since the inception of the mandate. The report provides an overview of the legal framework underpinning the rights of migrants and the relevant jurisprudence in that regard. It also explores the challenges faced by migrants concerning their access to adequate housing and analyses the policies and regulations affecting their rights.[1] The report concludes with some recommendations addressed to Governments.

II. General overview

4. International migrants worldwide are estimated to number over 200 million, representing 3.1 per cent of the world population.[2] Ninety million of them are migrant workers. Forty-eight per cent of all international migrants are women. While the larger proportion of migrants moves from low- and middle-income countries to high-income countries, representing a total flow of 80 million persons, it is estimated that South-South migration accounts for 47 per cent of all migration from the South.[3] Migration between developing countries may be even higher if undocumented migration is considered, as official numbers are for the most part unknown, but it is estimated to be around one third of documented migration.[2]

[1] The Special Rapporteur is grateful for the extensive contributions received from many sources that informed her report, particularly the information provided by academic sources coordinated by the United Nations Educational, Scientific and Cultural Organization Chair in Social and Spatial Inclusion of International Migrants (SSIIM) at the Università Iuav di Venezia (Venice, Italy).

[2] United Nations publication, Sales No. E.09.III.B.1.

[3] United Nations Educational, Scientific and Cultural Organization, "Creating better cities for migrants", January 2010. Available from www.logiqo.com/easycontact/ec/british/opencities/jul10/creating_better_cities_for_migrants.pdf.

5. The growing number of international migrants can be considered a by-product of globalization. As a result of the declining cost of transportation, reduced barriers to trade and business and increased awareness of opportunities through the mass media and communications technologies, migration patterns have undergone a profound transformation in terms of intensification and geographical diversification. However, while international flows of capital and goods find few restrictions in the globalized world, a number of obstacles and requirements constrain international migration.[4] In recent decades, the world has witnessed an increase in government-imposed barriers to movement, especially for low-skilled migrants. Restrictions on migration are found in regulations on entering or staying in a host or transit country and can both directly and indirectly affect a migrant's access to housing. Nonetheless, evidence has shown that while such policies are ineffective in reducing the number of migrants, they certainly contribute to their vulnerability.

6. International migration has become a vital feature of globalization and an important source of economic growth. Migrants are known to have participated in creating prosperity and wealth in their host countries, as well as assisting development and poverty reduction efforts in their countries of origin through remittances. Moreover, remittances are essential in family strategies to tackle increasing economic and social inequality.[5]

7. Besides globalization, two recent phenomena affect global migration patterns. As expressed in the annual report of the Special Rapporteur to the General Assembly in 2009 (A/64/255), climate change is a factor influencing migration. As a consequence of environmental degradation, depletion of natural resources and natural disasters, many people around the world find their lives and health threatened, their houses and land destroyed and their sources of livelihood taken away. Affected populations are then forced to migrate to other regions within their countries or to other countries. Migrants may leave voluntarily in search of better lives or may be forcibly evacuated during disasters.

8. The global economic crisis is another element affecting global migration. Although remittances have proven to be more resilient than other forms of capital flow, the impact of the economic crisis has led to a drop in remittances affecting receiving families and countries across the world. Moreover, cuts in public budgets and services as a result of the crisis particularly affect migrants, who often need to resort to public services and infrastructure in the host country. The increase in unemployment disproportionately affects migrant workers in those sectors significantly affected by the economic crisis, such as construction, tourism and domestic work. With no regular employment and little income, migrants are less likely to afford to pay rent or mortgages. They are thus at risk of defaulting and becoming homeless. As explained in the Special Rapporteur's annual report to the Human Rights Council in 2009 (A/HRC/10/7), in Spain migrants were particularly affected by the crisis, and it is estimated that 180,000 Latin American families were at risk of default in 2008. Furthermore, discrimination and xenophobia are on the rise, including as a result of the economic downturn, and many Governments have

[4] P. Marcello Balbo (ed), *International Migrants and the City*, United Nations Human Settlements Programme and Dipartimento di Pianificazione Università Iuav di Venezia, June 2005.

[5] P. Marcello Balbo, "Social and spatial inclusion of international migrants: local responses to a global process", SSIIM Paper Series, vol. 1 (Venice, October 2009).

succumbed to demagogic policies matching or reinforcing the nationalistic sentiments of their constituencies.[5]

9. Migrants are particularly vulnerable to human rights violations, the enjoyment of housing being among the most endangered rights. The duties of migrants to the host State are equal to those of locals from the moment that they enter the host community, as they are bound by its laws. However, migrants do not enjoy equal rights and usually endure inferior conditions in every social sphere. Although several international instruments oblige States and other agents to ensure the right to adequate housing, migrants are frequently victims of discrimination in that respect.

10. The realization of the right of migrants to adequate housing is often limited owing to a number of factors, such as marginalization and intolerance, inadequate housing policies or inadequate coverage of social housing schemes, cultural barriers and obstacles stemming from the legal status of migrants. In most migration processes, it is common that migrant status represents a clear disadvantage when one is looking for a place to live. A number of factors usually combine to create this circumstance: the urgency of newly arrived migrants to find a home; their lack of information; the legal insecurity in which migrants find themselves in the host country; and the stereotyping and intolerance shown towards migrants in the public and private spheres. As a consequence, among underprivileged groups, migrants face added difficulties and are less likely to find adequate housing. In this context, the undifferentiating character of most housing policies respond imperfectly to this structural inequality and allow discriminatory practices to flourish.

11. States are under an obligation to ensure non-discrimination and equal treatment to migrants in the enjoyment of economic, social and cultural rights, including the right to adequate housing. Moreover, the high degree of vulnerability that migrants experience as a mere consequence of their status requires the adoption of special measures to counter the cumulative negative effect of systemic marginalization and discrimination. Regrettably, many States have explicitly indicated that they do not wish to provide the same degree of protection to migrants as to their own citizens and even less to undocumented migrants.

12. In the present report, the Special Rapporteur pays particular attention to the situation of migrant workers employed in low-skilled and informal work as well as undocumented migrants, not only because their housing situation is of grave concern, but also because they represent the largest proportion of migrants worldwide, and thus their human rights situation is regrettably replicated across the globe. The situation of migrant workers belonging to minority groups and migrant women and children is also explored, in the light of the multiple forms of exclusion these vulnerable groups experience. Before referring to the challenges faced by migrants in their right to adequate housing and the public policies affecting them, the report analyses the legal framework applicable to migrants regarding their access to adequate housing and evokes the importance of the principle of equality and non-discrimination in this context.

III. Legal framework

A. The right of migrants to adequate housing in international human rights law

13. In line with articles 2 and 11 of the International Covenant on Economic, Social and Cultural Rights, the right to adequate housing should be exercised without discrimination of any kind based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[6]

14. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination sets out the right of everyone, without distinction as to race, colour or national or ethnic origin, to equality in the enjoyment of the right to housing. Article 43 of the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families requires States to ensure the same treatment regarding access of documented migrants to housing as is afforded to nationals, including social housing schemes and protection against exploitation in respect of rent. Moreover, article 64 requires States to promote sound, equitable and humane conditions in connection with international migration and to pay due regard not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers.

15. Article 6 of the International Labour Organization (ILO) Migration for Employment Convention (Revised) of 1949 requires parties to the Convention to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of accommodation. Similarly, the ILO Workers' Housing Recommendation of 1961 calls upon the competent authorities to pay particular attention to the particular problem of housing of migrant workers and their families and to ensure as rapidly as possible equality of treatment between migrant workers and national workers in that respect.

16. At the regional level, article 13 of the European Convention on the Legal Status of Migrant Workers, requires States to accord to migrant workers treatment not less favourable than that accorded to its own nationals with regard to access to housing and rents; to ensure that standards of fitness of accommodation are kept up for migrant workers as for its own nationals; to protect migrant workers against exploitation in respect of rents; and to ensure that the housing of migrant workers is suitable. In addition, article 19 (4) (c) of the European Social Charter requires States to secure documented migrant workers and their families treatment not less favourable than that of their own nationals regarding accommodation.

B. Relevant jurisprudence of international human rights bodies

17. In General Comment No. 20 on non-discrimination in economic, social and cultural rights, the Committee on Economic, Social and Cultural Rights stresses that the rights enshrined in the Covenant, including the right to adequate housing, apply

[6] According to art. 2, para. 3, of the Covenant, developing countries may determine to what extent they will guarantee economic rights to non-nationals with due consideration to human rights standards and the needs of their national economy.

to all people, including non-nationals and migrant workers, regardless of their legal status and documentation. It thus affords equal protection to documented and undocumented migrants. Accordingly, it requests States to adopt measures, including legislation, to prevent and eliminate formal and informal discrimination and to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds.

18. General recommendation No. 30 of the Committee on the Elimination of Racial Discrimination calls on States to remove obstacles that prevent the enjoyment of the right to adequate housing to non-citizens and to guarantee them equal enjoyment of this right with citizens. In particular, the Committee requests States to guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens as well as to avoid segregation in housing and ensure that housing agencies refrain from engaging in discriminatory practices. In its decision on F.A. v. Norway (see A/56/18, annex III), after learning that housing advertisements in Norway contained requirements such as "non-foreigners desired", the Committee urged the State to adopt measures to ensure that housing agencies refrain from discriminatory practices and to guarantee to citizens and non-citizens the right to adequate housing.

19. In its concluding observations of 25 May 2007 on Egypt (CMW/C/EGY/CO/1), the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families expressed its concern about reports that some migrant workers suffer from discrimination, inter alia, in the area of housing, and encouraged the State to ensure that the rights provided for in the Convention are enjoyed without discrimination. The Committee expresses similar concerns with regard to non-Arab migrants in the Syrian Arab Republic in its concluding observations of 2 May 2008 (CMW/C/SYR/CO/1).

20. In its conclusions on Albania of 2006, the European Committee of Social Rights recalled that according to article 19, paragraph 4, of the European Social Charter, States must eliminate all legal and de facto discrimination concerning access to public and private housing for migrant workers and that, accordingly, no legal or de facto restrictions on subsidized housing may be implemented. In its conclusions on the United Kingdom of Great Britain and Northern Ireland, the Committee noted that there were no objective, pre-established and easily understandable eligibility criteria to qualify for housing benefits, and requested information from the Government on the number of foreign nationals who had been refused any form of social assistance on the grounds that they did not satisfy the habitual residence condition. Furthermore, in its decision on the case DCI vs. the Netherlands, the Committee stated that the State must provide adequate shelter to undocumented migrant children under its jurisdiction.

IV. Conceptual framework for combating discrimination in access to adequate housing

A. Principle of equality and non-discrimination

21. Discrimination is any differential treatment that is based on prohibited grounds of discrimination and that creates or maintains inequalities and disadvantages suffered by certain groups in society with respect to the enjoyment of human rights

(see E/C.12/GC/20, para. 7). Direct discrimination exists when legislation or policies are adopted with a view to overtly privileging some groups in society to the detriment of others. However, when looking at discrimination, States should also look at indirect discrimination, which concerns measures that, without explicitly discriminating on certain grounds, might have a disproportionate impact on the exercise of human rights by a particular group (ibid., para. 10). Such apparently neutral measures, which de facto favour dominant cultures, are illegitimate and must be outlawed by States in order to ensure the full realization of the equality and non-discrimination principle (ibid., para. 12).

22. Discrimination is often a precondition and by-product of the marginalization to which certain groups and individuals are subject and is the root of many inequalities in society. On many occasions migrants suffer multiple forms of discrimination on the basis of national origin, culture, religion or sex. The multiple layers of discrimination and exclusion faced by migrants affect their access to adequate housing. This marginalization is often a manifestation of larger forms of structural discrimination that extend through the institutional, cultural, social and economic fabric of society, adversely affecting the housing conditions and overall well-being of migrants.

23. Non-discrimination and equality provisions are thus critical components of the right to adequate housing and crucial for the advancement of migrants. As a key principle of international human rights law, non-discrimination is central to a human rights approach to housing, especially considering the often inadequate housing conditions of migrants. The effective realization of the right to housing through the enforcement of non-discrimination and equality principles is essential to allow migrants to lead dignified lives and participate fully as members of society.

24. States have an immediate obligation to ensure non-discrimination in the enjoyment of economic, social and cultural rights, including the right to adequate housing, regardless of their level of development, in order to reduce existing inequalities (see E/1991/23, annex III, para. 1). The obligation of non-discrimination requires the equitable allocation of resources and services to ensure the realization of the right to adequate housing to all, and is not subject to progressive realization. It entails prioritizing the needs of marginalized and disadvantaged groups; eliminating laws, policies and practices that disproportionately affect the right to adequate housing of certain groups; incorporating equality and non-discrimination principles in all legislation and policies; and adopting special measures to counter embedded discrimination and inequalities against particular groups. States have no justification for not protecting vulnerable groups from housing-related discrimination, as the obligation to prohibit discrimination is binding on all States even in times of severe resource constraints (see E/1991/23, para. 12, and E/C.12/GC/20, para. 13).

Private discrimination and corporate responsibility

25. To ensure the effective implementation of equality and non-discrimination principles, States must guarantee that the prohibition of discrimination is also respected by private parties. States are obliged to ensure that migrants receive fair treatment even when the State is not the provider of housing or related services. Hence, States must guarantee that private providers comply with the principle of non-discrimination and make sure that the private provision of services does not

represent an impediment to the availability, accessibility, habitability and affordability of housing for all sectors of society. In this respect, the obligation to protect entails the obligation to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds and thus the adoption of all necessary measures to prevent, eradicate and punish discriminatory practices between private actors (see E/C.12/GC/20, paras. 11 and 36-40). In that regard, the Committee on the Elimination of Racial Discrimination stressed that to the extent that private institutions influence the exercise of rights or the availability of opportunities, the State party must ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination" (CERD/48/Misc.6/Rev.2, para. 5).

26. With regard to the responsibility of private actors to respect human rights, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, has developed a framework to guide the business and human rights agenda, which is based on three principles: the State duty to protect against human rights abuses by third parties, the corporate responsibility to respect human rights and the need for more effective access to remedies for victims.[7] Corporate responsibility requires specific human rights due diligence (to become aware of, prevent and mitigate the adverse human rights impact of activities and relationships of companies), and the provision of grievance mechanisms for victims of human rights abuses (see A/HRC/11/13).

B. Need for special measures

27. Non-discrimination and equality also imply that States have the obligation to recognize and care for the differences and specific needs of groups that suffer particular housing challenges or that have been historically discriminated against in terms of access to housing and essential services by the State or private actors. Therefore, the obligation to ensure non-discrimination requires positive measures of protection to be applied to particular groups, even in times of emergency or financial constraint (see E/C.12/GC/20, paras. 9, 12 and 13).

28. The protection of migrants against discrimination needs to go further to include some differential treatment or special measures in order to obtain substantive equal treatment, putting all members of the community on an equal footing. States are required to take affirmative action to attenuate or suppress the conditions that perpetuate discrimination and to rectify its cumulative adverse effects on housing (ibid., para. 9). Indeed, the Human Rights Committee pointed out, in General Comment No. 18 on non-discrimination, that not every differentiation in treatment will constitute discrimination if the aim is to achieve a purpose which is legitimate under the International Covenant on Civil and Political Rights and if the criteria used are reasonable and objective. However, the differential treatment should not go beyond what is needed to achieve the goal. Moreover, the Committee on Economic, Social and Cultural Rights has pointed out that the obligation to facilitate the prohibition of discrimination may entail the

[7] *Human Rights Translated: A Business Reference Guide*, Castan Center for Human Rights Law, International Business Leaders Forum and Office of the United Nations High Commissioner for Human Rights, 2008.

adoption of measures to ensure equal opportunities for minorities in fields such as health, employment, housing and education.[8] In General Comment No. 16, the Committee also stressed that temporary special measures may sometimes be needed in order to bring disadvantaged or marginalized groups of persons to the same substantive level as others.

29. Participation is also an important factor when ensuring the equal enjoyment of the right to adequate housing of non-citizens. Migrants are entitled to participate in decision-making on issues, programmes and policies affecting their living conditions by contributing to their design, delivery and monitoring as well as to the tailoring of special measures required to address their needs. States must adopt measures to guarantee the effective and active participation of migrants in this regard.

V. Main challenges in the realization of the right of migrants to adequate housing

A. Migrants working in low-skilled, low-paid and informal jobs

30. Migrants' access to housing is deeply affected by their economic status. It is important to make the distinction between: (a) migrants entering the host country as highly skilled professionals, with formal employment, high or middle incomes and access to pension and other social security schemes; and (b) migrants employed in low-skilled, irregular, seasonal and hazardous work, with low wages and no social security. The first group of migrants often have legal and economic access to purchase or rent high-quality accommodation in well-located neighbourhoods with full access to services, infrastructure and facilities. For migrants working in low-paid informal jobs, mostly in construction, tourism, care and domestic work, the situation is very different, as their salaries and irregular working conditions usually hamper their access to the housing market on the same footing as locals. The following section will focus on the housing conditions of the latter group of migrants.

31. Migrant workers often live in small private rented rooms or flats, properties arranged or provided by employers, slum dwellings, overcrowded houses of relatives and friends or sometimes social housing. They usually face discrimination and numerous obstacles in accessing private and public housing. Lack of information about housing alternatives and schemes, bureaucratic procedures, regulations in the housing sphere and tenants' rights often combine to make it difficult for migrants to pursue adequate housing even when national and local legislation does not prevent them from doing so. Moreover, on many occasions language constraints make these tasks harder or even impossible.

Access to private housing

32. In the private sector in most countries, it is difficult for low-income migrants to rent private housing, as homeowners often avoid renting to them because of xenophobic sentiments, fear of insolvency or uncertainty of income, inadequate

[8] See, for example, E/C.12/1/Add.19, para. 31; E/C.12/1/Add.25, para. 23; and E/C.12/1/Add.30, para. 33.

legal documents, short-term stays or lack of an employment record. Moreover, migrants are often asked to provide guarantees that they cannot access in the hosting country. When migrants manage to rent a private home, they are usually requested to pay onerous rents and make advance payments. Migrants may also face discrimination when trying to purchase a property and are sometimes barred by laws and regulations from doing so.

33. Owing to their condition as migrants, they find themselves in vulnerable situations when faced with price increases and unfair or rapacious treatment. Lacking the means to protect themselves from predatory practices and market trends, many migrants end up facing eviction for non-payment of rents and, subsequently, homelessness.

34. For example, in Turkey, many migrants live in substandard informally rented houses and pay higher prices than local people. In Australia, many newly arrived migrants live in poverty because they have to pay high rents from the limited salaries they obtain in low-paid employment.

Access to social housing and subsidies

35. In the public sphere, insufficient information and inadequate advice, discrimination in the allocation of dwellings or financial assistance, laws restricting the access of non-citizens to public housing, cumbersome bureaucracy and lack of access to grievance mechanisms restrict the access of migrants to public housing. In many countries migrants are not entitled to housing assistance or to public housing, which are reserved for long-term residents. Financial mechanisms supported by the State are also often off-limits for migrant workers.

36. For example in Gibraltar, migrants are not eligible to place their names on the Government housing list.[9] In Egypt, non-citizens can apply for private mortgages but are not eligible for financing programmes for low-income populations.

Overcrowded and unhealthy housing conditions

37. As a result of restricted access to public and private housing, migrant workers sometimes resort to living in substandard apartments or rooms, as well as in informal settlements on the outskirts of the city, without access to essential services or facilities. When finding their own accommodation is not possible, migrants are housed by their relatives, friends and co-nationals.

38. In her report on her mission to the United States of America (A/HRC/13/20/Add.4), the Special Rapporteur observed that many migrant families were living in conditions of severe overcrowding, particularly in Los Angeles.

39. In its concluding observations on France in 2008 (E/C.12/FRA/CO/3), the Committee on Economic, Social and Cultural Rights stressed its concern about the disproportionate concentration of migrants in deprived neighbourhoods with poorly maintained low-quality housing stock and requested the State to combat discrimination in housing, including by private actors.

[9] "Rock and a hard place", *The Guardian*, 28 March 2009. Available from www.guardian.co.uk/money/2009/mar/28/work-discrimination-gibraltar-morroco.

40. In Thessaloniki, Greece, 80 per cent of Albanian migrants were identified as homeless, with others living in poor housing conditions with minimal services or infrastructure.[10] In Rosarno, Italy, 55 per cent of seasonal workers had no access to running water in their place of residence, 54 per cent had no electricity, 60 per cent had no toilets and 91 per cent had no heating system.[11] In Spain, houses of migrants are smaller, older and more poorly equipped and maintained than the homes of the rest of the population.

Living in the workplace

41. Many migrant workers live in accommodations provided by their employers. In some countries, employers of migrant workers are required to provide them with housing. Such housing often lacks the necessary infrastructure, space and maintenance, however. In some cases migrant workers are housed in unfinished buildings, in shacks, in the open air or in metal containers with insufficient ventilation, electricity and sanitary infrastructure. On occasion, employers request a high percentage of the worker's salary to cover accommodation costs, even if the housing is substandard.

42. In her report on the mission to Maldives (A/HRC/13/20/Add.3), the Special Rapporteur expressed concern about the dire housing and living conditions of migrants who came to the country to work on construction sites, in resorts and in the domestic sector. Some 80,000 migrants, 25,000 of whom lack regular status, live in the country. The Special Rapporteur witnessed the hardships endured by migrants at various construction sites.

43. In Malaysia, migrant workers are sometimes accommodated by their employers in blocks of 10 metal containers hosting up to 8 people each. Potable water, air systems, electricity and sewerage are often scarce.[12] In Singapore, migrant workers have been found living fenced up in windowless rooms holding up to 30 workers.[13]

Segregation and spatial exclusion

44. The segregation within the urban structure of the hosting territory is another dimension of migrant housing conditions: stereotyping, xenophobia and suspicion against migrants and the erection of barriers to keep them away from the local community foster the exclusion of migrants from the urban space. Segregation is also a consequence of insufficient access to social housing and services, which denies migrants access to fully serviced neighbourhoods, confining them to unserviced and unplanned areas with poor conditions and insufficient infrastructure and further fragmenting cities and fostering spatial clustering. Moreover, the need

[10] "Migrants, minorities and housing: exclusion, discrimination and anti-discrimination in 15 member States of the European Union", European Monitoring Centre on Racism and Xenophobia, December 2005. Available from: www.libertysecurity.org/IMG/pdf_EUMC_Migrants_minorities_and_housing.pdf.

[11] "The fruits of hypocrisy", Medici Senza Frontiere, March 2005. Available at http://www.doctorswithoutborders.org/press/2010/MSF-The-Fruits-of-Hypocrisy.pdf.

[12] "Trapped: the exploitation of migrant workers in Malaysia", Amnesty International Publications, London, 2010. Available from www.amnesty.org/en/library/asset/ASA28/002/2010/en/114eba25-6af5-4975-9ea3-02c22f6bdc5a/asa280022010en.pdf.

[13] "Temporary housing sites still needed", *Straits Times*, 18 September 2008. Available from http://migrantworkerssingapore.blogspot.com/2008_09_01_archive.html.

for undocumented migrants to remain invisible to authorities and the desire of all migrants to increase protection among members of each national community and to receive assistance from relatives and friends encourages ghettoized urban spaces.[5]

45. For example, in Johannesburg, South Africa, insufficient affordable housing has led to the concentration of West African migrants in a few inner-city areas and highly skilled migrants in gated neighbourhoods in the north of the city. In Padua, Italy, a fence 3 metres high and 80 metres long was built to separate the Via Anelli neighbourhood, where many migrants concentrated after being denied access to social housing elsewhere. In Berlin, Germany, Turkish "guest workers" are often found in certain neighbourhoods.[5] In Istanbul, Turkey, undocumented migrants tend to be concentrated in a few run-down neighbourhoods in the centre of the city where there are more informal employment opportunities and greater invisibility.

Violence and forced evictions

46. .Violence and forced evictions targeted towards migrants also raise serious concerns in this regard. Migrants living in informal settlements are often victims of forced evictions in the context of urban renewal projects. When no alternative accommodation is provided by the government, undocumented migrants, who often lack access to social security and services, are rendered homeless, forced to move in with friends or relatives or pushed to the outskirts of the city. In some cases, forced evictions are followed by deportation (see A/HRC/14/30, para. 52).

47. In France, for example, migrants from Côte d'Ivoire, residing in council homes in the north-eastern Parisian suburb of La Courneuve were evicted to make way for a new housing project and were living on the street.

B. Undocumented migrants

48. Undocumented migrants are those who lack legal status in the host or transit country. Some of them entered the country illegally, while others entered legally but their permission to remain was not extended or they lost their work permits together with their jobs. In addition, asylum-seekers whose refugee status has been denied, as well as victims of trafficking, often have irregular status. Indeed, it is not unusual for migrants to switch status during their stay in the host country. The United Nations has estimated that undocumented migrants represent 15 to 20 per cent of all international migrants, ascending to 30 million to 40 million persons.[14] In Asia and Latin America, it is estimated that 50 per cent of migrants are undocumented. Despite the data, it must be borne in mind that the majority of this group does not show up in statistics, since they are forced to live clandestinely for fear of deportation or detention.

49. Entering or staying in a country as an undocumented migrant creates numerous difficulties and hardship. The Special Rapporteur on the human rights of migrants has stressed that undocumented migrant workers are often homeless or living in crowded, unsafe and unsanitary conditions (see A/HRC/14/30, para. 47). In many countries, access to housing for migrants is strictly dependent on residence permits.

[14] *Irregular Migration, Migrant Smuggling and Human Rights: Towards Coherence*, International Council on Human Rights Policy (Geneva, 2010).

Migrants under temporary or irregular migration status are often excluded from the main housing distribution mechanisms.

Access to private and public housing and subsidies

50. In the private market, undocumented migrants find it difficult to rent a house or to access a mortgage in order to purchase a property. When they are able to rent, the accommodation is usually provided at an exploitative price and is in very poor condition; they are relegated to certain neighbourhoods with often insufficient access to facilities or services. However, for those people with irregular status, there is often no alternative but to accept any conditions, even if substandard, and to pay whatever price is requested.

51. In addition, undocumented migrants are excluded from most government services, including social housing. Undocumented migrants have no access to subsidized public housing or financing mechanisms intended for low-income populations, which are usually granted only to qualifying long-term residents or documented migrants.

Overcrowded and unhealthy housing conditions

52. Because of the restrictions in access to housing in the private market and in public schemes, undocumented migrants live in overcrowded public or private dormitories or rented private houses, which are often in substandard condition and insufficiently equipped. Moreover, they are sometimes forced to live in squatter settlements and slums, given the lack of alternative affordable housing. Cases have also been reported of undocumented migrants sharing flats with many others, with the same beds being used according to the work schedule of individuals, with 5 or 10 beds allocated to one room.[15]

53. Undocumented migrants are also often lodged by family members or rely on diaspora networks for housing. Families often feel the obligation to host migrants from their own countries, even if they lack the space or facilities for them. When none of those alternatives is possible, migrants are left on the streets and need to be accommodated in shelters for homeless people. As space in the shelters is often limited, conflicts have emerged between national and non-national homeless people. In some countries, public shelters do not accommodate undocumented migrants, while others provide such opportunities for one or two nights only.

54. For example in the Netherlands, African and Eastern European migrants are often housed with relatives or co-nationals, and a network has been created in the country to support and provide counselling to host families. In Belgium, local authorities in East Flanders and Brussels established shelters for undocumented migrants under the condition that they agree to register or prepare to return to their countries.[16]

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[15] "PICUM's main concerns about the fundamental rights of undocumented migrants in Europe", Platform for International Cooperation on Undocumented Migrants (Brussels, October 2009). Available from www.picum.org.

[16] Narada Luckanachai and Matthias Rieger, "A review of international migration policies", International Labour Organization (Geneva, 2010). Available at www.graduateinstitute.ch.

Criminalization of irregular migration

55. A further impediment results from the adoption of legislation to curb irregular migration through law enforcement and criminalization. The irregular movement of migrants and their stay in a country has been turned into a criminal offence in many countries, punishable by fine and even detention. The European Union directive on the return of illegal immigrants adopted in 2008 provides for the detention of undocumented migrants for 6 to 18 months, even if the person has not committed a crime. In several countries across the world, civil servants and public officials, including health and education workers, are obliged to report undocumented migrants to the police or else face criminal charges. In some countries, renting property to undocumented migrants is considered a crime punishable by detention.

56. In Singapore, for example, landlords can be convicted for housing undocumented migrants. Similarly, in Italy, homeowners renting to undocumented migrants may face up to three years' imprisonment.[14] In this context, it is worth recalling that the Parliamentary Assembly of the Council of Europe, in its resolution 1509 (2006), stressed that adequate housing and shelter guaranteeing human dignity should be afforded to irregular migrants.

Living in the workplace; forced labour and trafficking of migrants

57. The living conditions of migrants housed by their employers, described above, fully applies to undocumented migrants in similar conditions. Indeed, because of their legal status, undocumented migrants are more likely to find themselves in this kind of working arrangement. Moreover, they are on many occasions subject to exploitative working conditions. Lacking formal recognition in the country of destination, undocumented migrants are unaccounted for and can often become victims of trafficking and slavery-like conditions. Cases have been widely reported of migrants whose employers steal their passports or national identity cards and force them to work and live in sweatshops, where they are housed in small overcrowded rooms and barred from leaving the premises. For example, in Argentina, migrants from neighbouring countries and their children have been found locked up and sleeping in small storerooms in the clandestine cloth factories in which they worked.[17] It is worth recalling the responsibility of States to protect migrants who become trafficking victims from these hideous practices, as well as to prosecute and sanction the perpetrators and provide redress to the victims.

C. Migrants belonging to minority groups

58. In some cases, non-citizens are subject to double discrimination as both migrants and members of minority groups. During her missions, the Special Rapporteur has encountered numerous cases of migrants from minority groups who have been denied residency permits even though they have lived in the host country for decades or even generations. The lack of regularization obstructs their access to housing in private markets as well as housing assistance from local governments. The Special Rapporteur also received numerous complaints of forced eviction of migrants belonging to minority groups.

[17] "Argentine sweatshop fire brings immigrants' plight to fore", *Latin American Herald Tribune*, 31 March 2006. Available from http://laht.com/article.asp?CategoryId=14093&ArticleId=233628.

particularly vulnerable to abuse, exploitation and trafficking.[20] Women often work in informal and temporary jobs, such as in domestic work, care activities and other informal jobs, with no social security, few rights and lower wages than their male counterparts. In such conditions, migrant women often find it difficult to find private accommodation for themselves and their families when they are the primary caregivers.

Domestic workers

64. Migrant domestic workers often live in their house of employment. Sometimes their visa requirements legally bind them to reside with their employers. In this context, migrant women are known frequently to endure unsafe and unhealthy living conditions and substandard accommodations, without essential facilities, insufficient space and lack of privacy or security. In some cases migrant workers are forced to sleep in the bathroom, kitchen or closet. Concerns have also been raised about the vulnerability of migrant domestic workers to domestic violence, sexual harassment, forced confinement and other abuse in their place of residence. Migrant women are all the more vulnerable when fear of eviction or deportation and lack of awareness about their rights prevent them from denouncing violence or unhealthy living conditions. When domestic workers report these abuses, the police have been known to dismiss their claims and return them to their employers. Migrant women victims of trafficking suffer further forms of abuse, often being confined in their workplace in degrading conditions, forced to work 20 hours a day, prevented from any external contact and receiving no salary[21] (see also A/HRC/14/30, para. 55).

65. On several occasions, the Committee on the Elimination of Racial Discrimination has expressed its concern over the treatment experienced by migrant domestic workers, such as debt bondage, illegal employment practices, illegal confinement, passport deprivation, rape and physical assault (see A/48/18, paras. 359-381).

66. In several countries, migrant domestic workers have been found sleeping in storage areas, laundry rooms, garages or corridors or on the kitchen floor.[21]

Undocumented and unaccompanied migrant children

67. The housing situation of children is directly connected to the status of their migrant parents. When parents, and especially migrant single mothers, have no access to employment, social benefits or other sources of livelihood in the host country, children may end up living in substandard conditions or being homeless alongside their parents. On many occasions, migrant women heads of families, sometimes in charge of several children, have had great difficulty in finding employment and caring for their children, finding reduced opportunities to provide adequate shelter and essential food.

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[20] Inés Alberdi, Executive Director of the United Nations Development Fund for Women, "The world economic and financial crisis: what will it mean for gender equality?", speech to the Fifth Annual Meeting of Women Speakers of Parliament, Vienna, 13 July 2009. Available from www.unifem.org/news_events/story_detail.php?StoryID=901.

[21] "Swept under the rug: abuses against domestic workers around the world", Human Rights Watch, vol. 18, No. 7 (C), July 2006. Available from www.hrw.org/en/reports/2006/07/27/swept-under-rug.

68. When children do not have documents they face triple discrimination: as children, as migrants and as being undocumented, and thus they constitute one of the most vulnerable groups. Their right to adequate housing, as well as other economic, social and cultural rights, are often severely affected in those circumstances. Among undocumented children, a particularly difficult situation is that of unaccompanied migrant children, who, because their parents are unable to work or they have no parents to look after them, are forced into poverty and exclusion. Often living on the streets, in parks and in front of shops, these children are excluded from child protection services and are denied adequate housing. In certain countries, unaccompanied children are detained for living on the streets and are institutionalized in prison-like conditions or deported to countries where they have no family to care for them[15] (see A/HRC/14/30, paras. 58 and 59).

VI. Legislative and policy decisions affecting the right of migrants to adequate housing

69. Policies restricting the renting of social housing to non-citizens and their access to housing assistance and financing obstruct the opportunity of migrants to find adequate housing and force them to live in substandard conditions. Such practices challenge the role of the State as facilitator of access to essential services and housing.

70. Official policies restricting access to residence permits and tighter border controls have a detrimental impact on the access of migrants to housing, since the lack of documentation is often an impediment to gaining private accommodation (through renting and purchasing) or housing subsidies.

71. Several countries have adopted regulations to criminalize homeowners who accommodate undocumented migrants and legislation restricting the ability of non-nationals to purchase private residences. These practices have an immediate detrimental effect on the right of migrants to adequate housing. By deliberately imposing limitations on the access to housing of non-citizens, States are interfering with the rights of migrants under their jurisdiction.

72. Measures adopted by States to relax restrictions and controls over the types of accommodations employers may provide to migrant workers, such as granting permission to convert sections of industrial premises into dormitories or to house migrants in metal containers without facilities or services, also have a detrimental impact on the housing and living conditions of migrants. Moreover, allowing substandard accommodation for migrants entails differential treatment that could be considered discriminatory.

73. The lack of appropriate legislation criminalizing such practices as trafficking, forced labour and degrading treatment, as well as the obstacles sometimes placed on non-citizens to denounce such abuses, are a grave omission of the State's responsibility to protect those under their jurisdiction. These practices also lead to violations of the right of the affected persons to adequate housing.

74. In many cities, the inclusion of migrants in the urban fabric has resulted in positive outcomes not only for migrants, but also for the social and economic development of the host community. Societies are not only increasingly acknowledging the role of migrants in development, economic growth and cultural

enrichment, but also the responsibility of the recipient community to promote the well-being and fundamental rights of those groups.

75. The adoption of legislation recognizing the State's obligation to ensure equal access to housing and social services to migrants regardless of their immigration status is a good practice that allows all migrants to be on an equal footing with nationals when accessing essential services facilitated by the State. Those practices assist in combating substandard, unhealthy and overcrowded living conditions of migrants and promote the enjoyment of their right to adequate housing. In Argentina, the 2004 migration law established the State's obligation to guarantee access to shelter, social services and public goods under equal conditions to all migrants regardless of their immigration status (A/HRC/14/30, para. 61).

76. Regulations requiring employers to assist migrant workers in finding accommodation can have a positive impact, as long as the employers are also required to ensure that the essential components of the right to adequate housing are respected, specifically, affordability; habitability; availability of services and infrastructure; accessibility; and appropriate location. Effective monitoring of the housing conditions of migrants accommodated by their employers is essential to guarantee the realization of this right. In Singapore, the law requires employers to be responsible for and to bear the costs of foreign workers' upkeep, as well as to provide them with acceptable accommodation (although actual practice may not be in compliance with this regulation).

77. In some cases, local governments have established programmes to assist low-income migrant families in paying their rents, obtaining a house or doing maintenance work on their residences and to give both documented and undocumented migrants access to social policies. As a result, migrant families have equal opportunities to enjoy adequate housing and living conditions. Since migrants often represent a significant proportion of the poor, non-restrictive policies addressed to the entire low-income population can have a real impact on the living conditions of migrants. In Spain, the municipalities of Salamanca and Valladolid provide financial assistance to low-income populations, including migrants, to rent their homes.[22] Similarly, in Catalonia, the provincial immigration office, the Fundación Caixa Catalunya and a network of non-governmental organizations assist in the provision of housing for documented and undocumented migrants, as well as for asylum-seekers.[23]

78. In some countries, Governments have adopted commendable policies to thwart unfair treatment against migrant tenants and prevent discrimination against non-citizens trying to rent an apartment. In Canada, the Ontario Human Rights Commission adopted a policy on housing and human rights according to which tenants cannot be refused on grounds of citizenship or refugee status. The policy is also aimed at prohibiting harassment against tenants on those grounds (see A/HRC/14/30, para. 68).

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[22] Pablo Álvarez, "Aval municipal de 500 euros para facilitar el alquiler a los inmigrantes", *20Minutos.es*, 13 June 2007. Available at www.20minutos.es/noticia/246926/o/facilitar/alquiler/inmigrantes/;%20. See also www.aytosalamanca.es/Areas_y_Servicios/Bienestar_Social/Servicios_sociales/ceas.html.

[23] "Caixa Girona da su visto bueno a la fusión con La Caixa". Available at http://cajasybancos.blognomia.com/2010/05/.

79. A good practice witnessed in certain cities entails the involvement of migrants in local decision-making processes concerning urban planning and city projects affecting their neighbourhoods or areas of residence. Such approaches not only guarantee that the needs of migrants are taken into consideration when urban strategies are decided, but also foster a sense of the integration of those groups into their local communities. In Vancouver, Canada, the City Plan Initiative, undertaken from 1993 to 1995, entailed the participation of 20,000 people, including diverse cultural communities and migrant groups in the city-planning process, which subsequently became the City Plan Neighbourhood Visions process.[3]

VII. Conclusions and recommendations

80. **The way in which the status and rights of migrants are recognized determines their degree of integration in the country of destination. Legal and administrative restrictions imposed in the field of housing affect the living conditions of migrants and prevent them from living a dignified life, fully integrated into the community that hosts them. Patterns of discrimination and segregation are witnessed in cities across the world, where migrants are excluded from the essential structures and interactions that constitute urban life. Moreover, the present tendency towards migration is one of greater controls, physical barriers and the pursuit of migrants' invisibility.**[5]

81. **Migrants, however, have a number of rights in their country of destination that must be recognized and respected by public authorities and private individuals. Regardless of their immigration status, all migrants must be afforded essential levels of protection with regard to their access to adequate housing and living conditions. Accordingly, States are under the obligation to adopt all necessary measures to progressively ensure the realization of the right of non-citizens under their jurisdiction to adequate housing and to protect them from discriminatory, unfair and degrading treatment. It is worth recalling that, as part of their core obligations and with immediate effect, Governments should ensure access to basic shelter and housing to all migrants in their territory. To fulfil this obligation, the Special Rapporteur provides a number of recommendations.**

82. **Access to essential services provided by the State is often critical for migrants in vulnerable situations. As part of their responsibility to fulfil human rights and in line with the non-discrimination principle, States must work to overcome inequalities affecting migrants' access to housing, water supply, sanitation systems and other essential services.**

83. **States should elaborate and adopt a national housing strategy that establishes the objectives and available resources, time frame and responsibilities for the development of appropriate housing conditions that include the needs of migrants. In addition, States should ensure that laws, strategies and plans of action are implemented in such a way as to address discrimination by public and private actors, in particular with regard to the right to adequate housing, and take account of the situation of documented and undocumented migrants. State policies should include special measures and incentives to change the attitudes of public and private actors towards migrants. States should frequently review the regulations governing housing**

allocation in the public and private spheres and adopt effective inspection and enforcement mechanisms.

84. Measures to ensure access to adequate housing for migrants require effective universal housing policies, in addition to specific policy measures addressed to migrants. Targeted policies are necessary to make up for deficiencies in the market and the public provision of housing and to ensure equal access where embedded discriminatory practices prevent this from happening. Effective targeted policies require a reliable assessment of the housing needs of migrants, conducted in consultation with them. Matching the elaboration of universal policies inclusive of migrants with the adoption of special plans to address their particular housing challenges is thus recommended to help foster the real integration of migrants into the community and to promote the enjoyment of their right to adequate housing.

85. As part of social and cultural integration policies, States should involve migrants in decision-making processes and promote their active participation in public life through adequate representation and participation mechanisms. States should also inform migrants of their rights and duties in the country and promote their active exercise. Migrants are at a particular disadvantage as a result of lack of information. The need for appropriate housing information and advice to prevent housing exclusion and homelessness of migrants is essential, and States have the responsibility to provide it. They should ensure that information and advice on rights and duties relating to housing is available to migrants, including in their native languages. Furthermore, States should foster mutual understanding among local communities and ensure mutual respect for cultural diversity.

86. The effective monitoring of the housing situation is an immediate obligation of States. Governments should take the measures necessary to ascertain the full extent of homelessness and inadequate housing within their jurisdiction. The indicators used to assess the housing situation must be disaggregated on the basis of the prohibited grounds of discrimination, including national origin (and citizenship), so as to ensure an accurate description of the housing and living conditions of particularly vulnerable groups, such as migrants. Housing strategies should assess the needs of migrants through periodic housing surveys and monitor housing indicators related to equal opportunity.

87. It is recommended that States frequently review the regulations governing housing allocation in the public and private spheres and adopt effective systems of inspection and enforcement. Moreover, States should monitor and report on the potential exclusionary and discriminatory effects of housing markets.

88. Regulations and policies aimed at controlling property prices, providing access to urbanized land and affordable renting conditions, as well as the provision of grievance mechanisms to victims, including migrants, are essential to prevent rapacious practices against migrants and to counteract the disproportionate vulnerability of migrants in the housing market.

89. Discrimination and xenophobia affect the living conditions of migrants and their coexistence with the local community. They have thus been identified as key factors in the exclusion of migrants from adequate housing. States need

to combat xenophobia and discrimination as a matter of urgency and ensure that no legislative or administrative acts reinforce discrimination against migrants with regard to their access to social or private housing. Moreover, States should take effective measures to ensure that housing agencies and private landlords refrain from engaging in discriminatory practices.

90. **States must protect migrants from discrimination in access to housing by public and private actors, through appropriate judicial and administrative procedures, and guarantee redress to victims. Accordingly, States should adopt all necessary administrative and legislative measures and provide the appropriate mechanisms to prosecute and sanction discrimination and unfair and degrading treatment against migrants regarding their access to housing and should offer effective grievance mechanisms and remedies to the victims.**

91. **Policies and resources to ensure equality of access to affordable housing are essential. States should ensure that affordable housing is available in areas containing a high proportion of migrants. Moreover, States should adopt measures to make the allocation of housing by public landlords more transparent.**

92. **Transparency in the allocation of private housing is equally essential to ensure the appropriate treatment of migrants in the private housing sector. Besides monitoring the behaviour of the housing market in terms of rent prices and guarantees of fair and equal treatment, it is recommended that States establish mechanisms for the registration and regulation of private landlords, thus allowing for more effective monitoring of the allocation of housing to migrants.**

93. **The provision of housing should not be denied to undocumented migrants; even they must be afforded a minimum level of housing assistance that ensures conditions consistent with human dignity.**

94. **Education is a fundamental element in combating discrimination. States should provide training to authorities at the policymaking level and to officials working in the housing sector on human rights principles and standards, particularly on the right to adequate housing and on the principles of non-discrimination and equality of all.**

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Promotion and protection of the rights of children

Annual report of the Special Representative of the Secretary-General on violence against children

Summary

This initial report of the Special Representative of the Secretary-General on violence against children is submitted to the General Assembly in accordance with its resolution 64/146.

On 1 September 2009, Marta Santos Pais assumed her position. In the present report, she recalls the history leading up to the establishment of her position and the scope of her mandate, as defined by the General Assembly in resolution 62/141. She outlines her vision and the priority areas for her work and the strategies she intends to use to achieve progress in implementing the mandate entrusted to her, which builds upon the recommendations of the United Nations study on violence against children (see A/61/299).

The present report highlights the need to accelerate progress in strategic areas and the special emphasis the Special Representative will place on three overarching recommendations of the study, namely, the development in each State of a comprehensive strategy on violence against children; the introduction of an explicit national legal ban on all forms of violence, in all settings; and the consolidation of data and research in this field.

The report reviews key developments and initiatives promoted by the Special Representative to advance progress in the follow-up to the study at the global, regional and national levels; to promote a consultative process and strengthen strategic partnerships with key stakeholders, including Governments, United Nations partners, human rights bodies and mechanisms, civil society organizations and children and young people; and to secure firm support for her mandate.

* A/65/150.

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I. Background

1. In 2001, following a recommendation of the Committee on the Rights of the Child, the General Assembly in its resolution 56/138, requested the Secretary-General to conduct an in-depth study on the question of violence against children. In 2003, the Secretary-General appointed Paulo Sérgio Pinheiro as independent expert to lead the study.

2. The United Nations study on violence against children (see A/61/299), submitted at the sixty-first session of the General Assembly, addressed violence in five settings: the family, schools, alternative care institutions and detention facilities, places where children work and the community. The study recognizes that violence against children affects every country, remaining widespread, largely hidden and often condoned by society; violence has long-term consequences on children's life and development, carrying with it serious social costs.

3. The study presents a set of recommendations which provide a decisive reference for accelerating and monitoring progress in violence prevention and response. To promote dissemination and ensure effective follow-up to the study's recommendations, the study recommended the appointment of a Special Representative of the Secretary-General on violence against children.

4. The General Assembly took note of the recommendations of the study and requested the Secretary-General to appoint a Special Representative on violence against children to act as a high-profile and independent global advocate to promote the prevention and elimination of all forms of violence against children (resolution 62/141).

II. Appointment of the Special Representative on violence against children

5. On 1 May 2009, the Secretary-General announced the appointment of Marta Santos Pais of Portugal as his Special Representative on violence against children, at the level of Assistant Secretary-General. Ms. Santos Pais assumed her position on 1 September 2009.

6. According to the terms of reference approved in compliance with General Assembly resolution 62/141, the Special Representative reports directly to the Secretary-General, chairs the United Nations Inter-Agency Working Group on Violence against Children and collaborates closely with a wide range of partners, within and beyond the United Nations system. In accordance with Assembly resolution 64/146, the Special Representative reports annually to the General Assembly and the Human Rights Council.[1]

7. In conformity with General Assembly resolution 62/141, the position of the Special Representative and her Office are funded from voluntary contributions. The mandate was established for a period of three years, after which time it should be evaluated, including with regard to its funding. The Office of the Special Representative is located in New York and provided with administrative support by the United Nations Children's Fund (UNICEF). The Fund has established a trust

[1] For the report to the Council at its thirteenth session, see A/HRC/13/46.

account in order to receive, hold, administer and disburse financial contributions provided to fund the operation of the Office of the Special Representative, including payment for personnel costs.

III. Mandate of the Special Representative on violence against children

8. As a global independent advocate in favour of the prevention and elimination of all forms of violence against children, the Special Representative acts as a bridge-builder and a catalyst of actions in all regions, and across sectors and settings where violence against children may occur; she mobilizes action and political support to maintain momentum around this agenda and to achieve steady progress the world over.

9. The mandate of the Special Representative is framed by the United Nations study on violence against children and its strategic recommendations; it builds upon public health and child protection initiatives and developments, and envisages the protection of children from violence as a human rights imperative. Indeed, the Convention on the Rights of the Child and other international human rights instruments provide a firm normative foundation for the prevention and elimination of all forms of violence against children. These international standards constitute a sound reference for mainstreaming the protection of children from violence in the national policy agenda, helping to avoid fragmented, diluted or simply reactive solutions and influencing lasting change through their steady implementation. For this reason, the Special Representative promotes the universal ratification and effective implementation of core human rights treaties.

10. The Special Representative makes use of mutually supportive strategies, including the promotion of advocacy for concerns related to violence against children; the contribution to strategic meetings at the international, regional and national levels, including for the identification of good practices, and the promotion of cross-fertilization of experiences across regions, sectors and settings; the organization of field missions; and the promotion of thematic studies and reports.

IV. Priority focus for the mandate: a strategic agenda, solid partnerships and firm support

11. The protection of children from violence calls for urgent action. Violence is a harsh reality for millions of children around the world; it remains largely invisible and socially accepted, and it has serious, lifelong emotional and health impacts on children's lives; it undermines child development and learning abilities, inhibits positive relationships, provokes trauma and depression and leads to risk-taking and aggressive behaviour.

12. Guided by this sense of urgency and the need to accelerate progress in key strategic areas, the Special Representative will, over the period of three years foreseen for her mandate, place a priority focus on:

(a) Promoting a strategic agenda, building upon the recommendations of the United Nations study on violence against children;

(b) Strengthening key partnerships to achieve progress in the follow-up to the study;

(c) Securing firm support, including sound funding, to promote progress in children's protection from all forms of violence.

A. Promoting a strategic agenda

13. The recommendations of the United Nations study provide a navigation chart for accelerating and monitoring progress in violence prevention and responses. In view of their particular urgency, the study identified time-bound targets for three strategic overarching recommendations. Those areas remain critical and require renewed and firm attention. For that reason, in the broad framework of the study's recommendations, the Special Representative gives priority attention to initiatives aimed at:

(a) The development in each State of a national comprehensive strategy to prevent and address all forms of violence against children, mainstreamed in the national planning process, coordinated by a high-level focal point with leading responsibilities in this area, and supported by adequate human and financial resources to support implementation;

(b) The introduction of an explicit national legal ban on all forms of violence against children, in all settings;

(c) The consolidation of a national system of data collection, analysis and dissemination, and a research agenda on violence against children.

1. A national comprehensive strategy to prevent and address violence against children

14. A national strategy helps to shape a vision and mobilize action and resources for violence prevention and response. With strategic time-bound goals, it provides a navigation chart to stimulate and monitor progress, and support a process of lasting change. To be effective, the strategy needs to be mainstreamed in the national policy and development agenda, adequately supported by sound human and financial resources, and evaluated on a regular basis; and it needs to be coordinated by a high-level focal point with leading responsibilities on children's issues and with authority to articulate activities across governmental departments, in association with relevant stakeholders.

15. Violence against children impacts all children's rights and is therefore best addressed through the effective engagement of all levels of public administration and the involvement of all relevant ministries — including health, education and social affairs, gender, justice and home affairs, planning, economy and finance.

16. In many countries significant efforts are being deployed to move in this direction. In some cases, the development of a national strategy on violence has been promoted through a wide participatory process in which governmental departments, civil society organizations, academics and young people have taken part. In a number of other cases, States have set in place national plans of action and high-level coordinating bodies to oversee implementation of the Convention on the Rights of the Child, a core component of which is violence against children.

17. Those significant developments are welcome, but much remains to be done to ensure that violence against children gains visibility in public debate, and in the policy agenda as well as in relevant budgetary decisions.

2. An explicit national legal ban on all forms of violence against children

18. Legislation is a key component of any comprehensive national strategy on violence against children. It is an expression of a country's political commitment to work towards violence prevention and the protection of children's dignity and physical integrity. Legislation encourages positive discipline and the education of children through non-violent means; and it provides protection for victims and witnesses, enabling reporting and redress, and supporting assistance, recovery and reintegration.

19. Around the globe, law reform for children's protection from violence is building momentum. When the United Nations study was finalized, only 16 countries had legislation prohibiting violence in all settings, including corporal punishment in the home. Currently, 27 countries have introduced such a comprehensive legal ban; in all regions, legislative reforms are being pursued to achieve full prohibition, and in several countries new legislation is also under review to prohibit violence in specific settings. In some cases, a monitoring system has been developed to support implementation.

20. Even in countries where harmful practices persist behind deeply entrenched traditions, the legislative process has provided opportunities to involve community and religious leaders, parliamentarians, professional associations, academic institutions and grass-roots organizations, and engage communities concerned. Bridging international standards, policy action and local values, and motivating change from within, legislation has been supported as the fruit of true conviction, gaining traction as a genuine deterrent with preventive effect.

21. Although those are promising developments, additional vigorous efforts are needed. First, efforts to introduce a comprehensive legal ban need to be scaled up. Currently, only 107 States have laws prohibiting violence in schools, 151 countries prohibit it as a form of sentencing, and 108 as a disciplinary measure in penal institutions. Globally, only 4 per cent of children are legally protected from all forms of violence in all settings. Many governments have made commitments to adopt legislation to introduce such a comprehensive ban; when such commitments materialize, the total number of prohibiting States worldwide would reach at least 50, covering around 15 per cent of the global child population.

22. Secondly, in countries where a full legal ban has been adopted, further efforts are required to narrow the gap between legislation and practice. Legislation needs to permeate the work of institutions and shape the training and ethical standards of professionals working with and for children; implementation needs to be supported by awareness-raising and social mobilization initiatives, for the public at large and children in particular; and also by the development of easily accessible, child-sensitive, confidential and independent counselling and reporting mechanisms. This is an area where progress is urgent both to provide an effective remedy to child victims and to overcome the challenges presented by the reluctance of professionals working with and for children to address or refer these cases to relevant bodies and institutions.

23. Building upon strong commitments expressed by countries in all regions, and informed by good practices and lessons learned from past experience, this is an area where progress is within reach. To further consolidate this process, in early 2011 the Special Representative will host, with the Office of the United Nations High Commissioner for Human Rights (OHCHR), an expert consultation on law reform to combat violence against children.

3. Research and a consolidated data system to inform violence prevention and response

24. Widely perceived as a social taboo or a needed form of discipline, violence against children is seldom reported; official statistics remain limited in their ability to capture the true scale and extent of this phenomenon across nations and social groups. As a result, available information is scarce and inconsistent and only reflects the tip of the iceberg.

25. Yet, without good data, national planning is compromised, effective policymaking and resource mobilization are hampered, and targeted interventions are limited in their ability to prevent and combat violence against children.

26. This is an area where urgent action is required. Existing data sets on children provide a basis to build upon, but they need to be integrated beyond sectors and individual disciplines, promoting a holistic consideration of the child. Gaps in child protection areas need to be addressed and monitoring tools and indicators expanded, including to consider boys and girls of all ages and in all settings, and to address those at greatest risk. Moreover, those efforts need to incorporate children's views and perspectives, and capture their experience, and dynamic and evolving free agency. This is crucial to understand the hidden face of violence and effectively address its root causes.

27. Violence in all its forms affects the life of millions of children around the world. But, as we have learned from the many successful initiatives promoted across regions, it is not inevitable; violence can be prevented and effectively addressed. With a strategic national agenda, with strong and effective legislation, and with sound data and evidence to understand risk factors and inform policy decisions, a world without violence can be realized.

B. Consolidating strategic partnerships

28. The development of the United Nations study generated solid and strategic alliances, within and beyond the United Nations system. To advance the implementation of the recommendations of the study, strengthened partnerships are crucial. The Special Representative will therefore promote enhanced collaboration with key partners, including the Special Representative of the Secretary-General for Children and Armed Conflict; United Nations funds, programmes and specialized agencies; human rights treaty bodies and mechanisms; national governments, regional organizations, parliamentarians, national independent institutions on children's rights; and civil society, including children and young people.

29. Relevant institutional collaboration mechanisms have been set in place to support the Special Representative's mandate and consolidate progress through an effective consultative approach — they include the Inter-Agency Working Group on

Violence against Children and the non-governmental organization (NGO) Advisory Council for follow-up to the study (see sect. V below).

C. Securing firm support

30. Long-term support and predictable funding are indispensable for the effective and independent performance of the Special Representative's mandate. The General Assembly has called upon States and institutions concerned, United Nations agencies and entities, regional and civil society organizations, and the private sector to provide necessary support, including financial contributions. Voluntary contributions in support of the mandate and the Office of the Special Representative are channelled through a trust account which has been set up and is administered by the United Nations Children's Fund (UNICEF) in order to receive, hold, administer and disburse financial contributions provided for the mandate, including payment for personnel costs.

31. As of July 2010, initial contributions had been received. Additional secure funding is, however, required to enable the Special Representative to effectively pursue her role as a global independent advocate for violence prevention and the protection of children from all forms of violence.

V. Cooperation with key partners

A. Cooperation with the United Nations system, in particular with the Special Representative for Children and Armed Conflict and members of the Inter-Agency Working Group on Violence against Children

32. The Special Representative has given very high priority to the promotion of enhanced synergies with United Nations partners in the area of violence against children.

33. Strong cooperation has been developed with the Special Representative for Children and Armed Conflict. Regular meetings are held to exchange information and discuss areas for a mutually supportive collaboration, including in the promotion of joint initiatives and missions, and the consideration of joint advocacy for the protection of children's rights. In this regard, the joint participation in international conferences of relevance for both mandates has been particularly valuable.

34. The strong human rights normative foundation shared by both mandates, particularly the Convention on the Rights of the Child and its two Optional Protocols, provides strategic opportunities for further enhancing this critical collaboration.

35. Building on this foundation, the two Special Representatives organized a commemorative event to mark the tenth anniversary of the adoption of the Protocols and launch a global campaign aiming at the universal ratification of the Optional Protocols by 2012, the year of the tenth anniversary of their entry into force. The campaign was launched on 25 May 2010 in New York, with the Secretary-General,

and is promoted in close cooperation with UNICEF, OHCHR, the Committee on the Rights of the Child and the Special Rapporteur on the sale of children, child prostitution and child pornography. The goal of universal ratification has been widely endorsed by high-level international conferences, including the Third World Congress against Sexual Exploitation of Children and Adolescents (Rio de Janeiro, 2008), and is supported by international human rights bodies and a wide network of civil society organizations.

36. During this two-year campaign, the Special Representative on violence against children will promote global adherence to the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. This protocol is in force in 137 countries, and more than 80 per cent of those that have not yet ratified it are parties to the International Labour Organization (ILO) Convention on the Worst Forms of Child Labour, a treaty with legal obligations to fight the sexual exploitation of children. Several of those countries have also formally committed to ratify the Protocol, including in the context of the Universal Periodic Review of the Human Rights Council.

37. Achieving progress in this area is vital. Every year, millions of children are trafficked, enslaved through sexual exploitation, arranged marriage, illegal adoption or forced labour. In its most recent global report, ILO recognizes that 115 million children are victims of hazardous work; and the sale and sexual exploitation of children also figure prominently among the worst forms of child labour.

38. The universal ratification of the Protocol will provide a shared normative foundation to guide States' concerted action, to prevent loopholes in child protection systems and to fight impunity within and across borders, leaving no safe havens for perpetrators.

39. In her collaboration with United Nations organizations, the Special Representative on violence against children has built upon existing inter-agency mechanisms, in particular the Inter-Agency Working Group on Violence against Children, of which ILO, OHCHR, UNICEF and the World Health Organization (WHO) are core members. The Inter-Agency Working Group is a critical forum for consultation, promotion of policy formulation and mainstreaming of concerns related to violence against children within the United Nations system's agenda.

40. The Special Representative has maintained very close cooperation with the core members of the Inter-Agency Working Group, having held very fruitful bilateral discussions and working-level meetings in Geneva. The Special Representative welcomes the critical advice received and the support provided, which have been of decisive relevance for the shaping of her mandate and the missions she has conducted.

41. UNICEF provides administrative support to the Office of the Special Representative and has established a trust fund for the financial contributions provided in support of her mandate. Protection of children from violence is a key dimension of the mandate of UNICEF, and the Special Representative has been associated with important initiatives promoted by that organization.

42. In the framework of its 2008 Child Protection Strategy, UNICEF supports the follow-up to the United Nations study by strengthening child protection systems and promoting social change in attitudes towards children. The Special Representative participated in important discussions on the implementation of the UNICEF Strategy

and its focus on the protection of children from violence, at Headquarters and in the Middle East and North Africa, East Asia and the Pacific, and Latin America and Caribbean regions. She also held strategic meetings with the Child Protection Unit in New York, to enhance synergies and promote complementary work in areas falling within her mandate.

43. UNICEF is engaged in a number of initiatives to strengthen the evidence base concerning the nature and scope of violence against children, and consolidate efforts for data collection and analysis, and for the development of research on violence against children, including on harmful practices. The forthcoming 2010 UNICEF report on parental child disciplinary practices in a range of low- and middle-income countries confirms the high prevalence of violent disciplinary methods, but also recognizes that this practice coexists with non-violent discipline; close to 9 in 10 children experience physical punishment and psychological aggression, with higher rates among boys, among children between 5 and 9 years of age and in households where mothers condone corporal punishment and domestic violence; conversely, violent discipline was less prevalent when caregivers were engaged in greater levels of educational and play activities with their children.

44. The Special Representative was associated with the dissemination of this research, which addresses a priority dimension of her mandate and provides a sound basis to raise awareness of this phenomenon, to promote positive non-violent alternatives and to inform policies and actions for violence prevention and responses.

45. Sexual violence against children, and particularly against girls, has been a topic which has received increased attention. Building upon a national study on violence against children undertaken in Swaziland in 2007 and supported by the Clinton Global Initiative, UNICEF has joined WHO, the United Nations Population Fund and the United Nations Development Fund for Women, together with the United States Centers for Disease Control and Prevention, in a strategic partnership to promote similar research in other countries and provide support for the strengthening of an environment to protect girls against sexual violence.

46. This is a significant initiative that the Special Representative will continue to follow closely and which is expected to lead to important results.

47. OHCHR plays a decisive role in the process of implementation of the United Nations study's recommendations and has established, since 2007, a focal point on violence against children. Since the appointment of the Special Representative, the Office's advice and substantive support have remained crucial, helping to consolidate the human rights foundation of her mandate, while promoting the mainstreaming of children's protection from violence across the organization.

48. OHCHR supported the organization in Geneva of the Special Representative's meetings with members of the Inter-Agency Working Group on Violence against Children, with human rights treaty bodies, in particular the Committee on the Rights of the Child, and with special procedures of the Human Rights Council.[2] The Office also assisted in the organization of meetings with members of the NGO Advisory Council, the NGO Group for the Convention on the Rights of the Child and other civil society partners.

[2] For further information, see A/HRC/12/47.

49. At the invitation of OHCHR, the Special Representative participated in December 2009 in the Human Rights Council's Open-ended Working Group to explore the possibility of elaborating an optional protocol to the Convention on the Rights of the Child to provide a communications procedure. In her submission, the Special Representative recalled that the United Nations study had recommended the establishment of effective and independent complaints, investigation and enforcement mechanisms to deal with incidents of violence against children, and highlighted the relevance of a communications procedure for children's protection from violence. She recommended the development of a legal instrument that was duly framed by children's rights, provided for an effective and child-sensitive remedy, and established legal safeguards to protect child victims and prevent any risk of manipulation or reprisals.

50. The valuable role played by safe and accessible counselling, and by complaint and reporting mechanisms for children's protection from violence was given focused attention by the Human Rights Council in its panel discussion on the protection of children from sexual violence, in which the Special Representative on violence against children also participated in March 2010. The Council adopted a resolution[3] in which it strongly condemned all forms of sexual violence and abuse against children; and urged States to develop and establish child-sensitive counselling, complaint and reporting mechanisms that are confidential and safe. The Council also invited the Special Representative and the Special Rapporteur on the sale of children, child prostitution and child pornography to submit a joint report on this topic to the Council at its sixteenth session.

51. To inform the development of the report, the Special Representative will organize with OHCHR an expert consultation on this topic in September 2010. The meeting aims to provide a comprehensive overview of existing models of accessible and child-friendly counselling, complaint and reporting mechanisms, established at governmental level, and by independent institutions and civil society organizations; to reflect on challenges and good practices in the use of such mechanisms by children and their representatives, including in relation to child participation, accessibility, confidentiality, safeguard of privacy and victims' protection; and to make recommendations for their improvement.

52. The Special Representative's participation, in March 2010, in the meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights provided a valuable occasion to discuss ways of benefiting from the experience and advice of these strategic partners in the development of the Human Rights Council's report.

53. National independent institutions, including those with a distinct mandate on children's rights, act as spokespersons of children's voices and concerns, develop policy advocacy and research, provide critical advice, and in some cases address individual complaints. Being accessed directly by child victims and witnesses, those institutions offer an important remedy when violence occurs; and their action is instrumental to raise awareness about violence against children, to promote gender and child-sensitive approaches, to capture children's experiences and trauma, and to give advice to those in need. Their contribution to the report will be of crucial relevance.

[3] A/HRC/RES/13/20.

54. WHO actively supported the development of the United Nations study and remains a critical partner in the process of follow-up.

55. Violence prevention and the promotion of sound evidence, two priority areas addressed by the study, are high on the WHO agenda, as illustrated by the agency's work in the prevention of sexual violence against girls, in the development of new estimates on the prevalence and health impact of child maltreatment, and in the promotion of national surveys in this area. These dimensions gained centre stage at the Fourth Milestones of a Global Campaign for Violence Prevention Meeting, organized in September 2009 in Geneva, in which the Special Representative participated.

56. With high-level participation and expertise from across regions, the meeting provided an excellent platform to present new evidence on interventions to prevent interpersonal violence and reflect on lessons from a wide range of country-level initiatives.

57. The discussions gave particular attention to the protection of children from violence, including child maltreatment and its underlying causes. They also addressed strategies aimed at developing safe, stable and nurturing relationships between children and their parents and caregivers; promoting life skills for children and adolescents; reducing the availability and harmful use of alcohol, guns and knives; promoting gender equality and overcoming cultural and social norms that support violence; and supporting victim identification, care and support programmes.

58. Advancing work in these areas will remain a key dimension of the Special Representative's cooperation with WHO.

59. The Special Representative developed a fruitful collaboration with ILO, particularly with regard to the protection of children from violence in the workplace and in other labour-related activities. Regular meetings have been held to support the implementation of the study's recommendations, including through advocacy, the consolidation of data and research, the promotion of standard-setting activities, as well as the development of practical tools to support Member States in their efforts.

60. In May 2010, the Special Representative participated in the Global Conference on Child Labour held in The Hague, which marked the tenth anniversary of the entry into force of ILO Convention No. 182 on the Worst Forms of Child Labour, and it adopted a road map for achieving their elimination by 2016. The Conference provided a high-level forum for the Special Representative's advocacy in favour of the universal ratification of the Optional Protocols to the Convention on the Rights of the Child, and of the protection of children from violence and abuse. Those dimensions were also given strong attention in the Road map.

61. As highlighted by the Special Representative in her address, violence and child labour are closely interrelated. Violence in the home, in schools and in institutions, is a factor that pushes children into child labour, particularly its worst forms; violence is also a means to coerce children to work, and to keep them in exploitation and servitude. At the same time, violence and child labour can be prevented and effectively addressed, through the development of national action plans, the adoption of sound legislation and the strengthening of data and research. These

actions figure prominently in the Road map, which also constitutes a key instrument in the elimination of violence against children in work-related situations.

62. The Special Representative strongly supports the development of new ILO standards to ensure decent work for domestic workers. They open avenues for improving the protection of children from exploitation in domestic service and from any form of violence associated therewith. Child domestic workers, especially girls, are highly vulnerable to violence. Working in private households, often behind closed doors and away from their own home with little or no protection or social support, they are exposed to excessive working hours, hazardous tasks, social stigma and discrimination, and physical and emotional violence, as well as sexual abuse. The Special Representative remains committed to supporting this important standard-setting process and the adoption of binding provisions for the protection of children and young domestic workers.

B. Cooperation with human rights treaty bodies and mechanisms

63. The development of close collaboration with human rights bodies and mechanisms is an essential component of the Special Representative's agenda. This cooperation is critical in pursuing an integrated approach to children's protection from violence and capitalizing on synergies across mandates, in the overall framework of the implementation of children's rights standards and commitments to children, including those undertaken at the Millennium Summit, the special session of the General Assembly on Children and, more recently, the Third World Congress against Sexual Exploitation of Children and Adolescents. The Call for Action adopted by the Congress highlights the importance of close cooperation between mandate holders, and its agenda provides a valuable framework for mutually supportive actions and accelerated progress in the follow-up to the study's recommendations; those include the development of national plans and the enactment of effective legislation, and the establishment of reporting mechanisms for child victims.

64. In this regard, the Special Representative's cooperation with the Committee on the Rights of the Child gains crucial relevance. The United Nations study was developed at the request of the Committee and was strongly grounded in its work on the implementation of the Convention on the Rights of the Child. The Committee has devoted special attention to violence against children in thematic debates, general comments and during the consideration of States Parties' reports. At present, all concluding observations include a specific section on the follow-up to the study's recommendations and on cooperation with the Special Representative.

65. The cooperation with the Committee on the Rights of the Child helps to inform advocacy initiatives, assess progress on the protection of children from all forms of violence and support countries in their efforts. For this reason, the Special Representative met the Committee soon after her appointment and has developed very fruitful collaboration through regular meetings and exchange of information, and through joint participation in strategic events and initiatives, at the global, regional and national levels. This strategic partnership has gained a renewed emphasis with the launch of the joint campaign for the universal ratification of the Protocols to the Convention, and the collaboration in support of the development of the report on child-sensitive counselling, complaint and reporting mechanisms.

66. Collaboration with special procedures of the Human Rights Council has been equally important. The Special Representative participated in their annual meetings in 2009 and 2010, which were particularly useful for information-sharing, for the identification of good practices and the cross-fertilization of experiences, and for the identification of mutually supportive activities for violence prevention and elimination.

67. The joint statement issued on 2 March 2010 by the Special Representative and other relevant mandate holders in the aftermath of the earthquake in Haiti, voicing concern at the serious risks faced by unaccompanied and separated children to being abducted, enslaved, sold or trafficked, confirms the potential for this close collaboration.

68. As a cross-cutting issue, working to eliminate violence against children opens up avenues for developing partnerships across mandates, including child-related mandates, in particular with the Special Rapporteur on the sale of children, child prostitution and child pornography, with whom collaboration has been steadily strengthened and, as mentioned above (see para. 50), a joint report is being developed on child-sensitive counselling, complaint and reporting mechanisms. Cooperation is also valuable with violence-related mandates, including violence against women and torture; with economic, social and cultural rights-related mandates to help address the root causes of violence; as well as with mandates on the rights to education, freedom of opinion and expression to enhance violence prevention, consolidate a culture of respect for children's rights and empower children and young people.

C. Cooperation with civil society, including children and young people

69. The United Nations study was developed with strong support from civil society organizations and from children and young people, and they remain active partners in the process of implementation of the study's recommendations.

70. The collaboration with civil society has been critical and also facilitated by the establishment, in 2007, of the NGO Advisory Council. The Council has equal representation from leading international organizations and national and regional NGOs. Its primary aim is to encourage and maintain NGO involvement at national, regional and international levels, in advocacy with governments, United Nations agencies and other stakeholders for full implementation of the study's recommendations.

71. The Special Representative met with the NGO Advisory Council in early October 2009 in New York, and in March 2010 in Geneva. The meetings helped to shed light on strategic areas where progress can be achieved and to identify significant opportunities for cooperation in the follow-up to the study's recommendations at the global, regional and national levels, and across the various settings within which violence against children takes place. These areas and opportunities include the adoption of national plans of action to advance implementation of the study's recommendations, the legal prohibition of all forms of violence against children in all settings, the collection and dissemination of age and gender disaggregated data on violence against children, and the establishment of effective and accessible complaint mechanisms for children. The meetings also

considered ways of enhancing children's participation in the follow-up to the study, benefiting from their insights and experience, and mobilizing and empowering them to take action in their own communities.

72. The Special Representative also met in Geneva with the NGO Group for the Convention on the Rights of the Child and its Working Group on Children and Violence. Both highlighted the importance of pursuing strong collaboration with human rights bodies and mechanisms, in particular the Committee on the Rights of the Child and the Human Rights Council.

73. The Special Representative also promoted the consolidation of partnerships with regional NGO networks and with child-led organizations on violence prevention and responses. This cooperation will continue to be actively pursued to advance the process of implementation of the study's recommendations.

74. Over recent years, the participation of children and young people in the promotion of actions to address violence against children has been significant. Their contribution to the study was essential and their involvement continues to be critical for the steps ahead.

75. The Special Representative has been committed to reach out to children and young people in her meetings and expert discussions at global, regional and national levels. Across regions, children identify violence as a priority concern and inspire a deep sense of urgency; as agents of change, developing child rights clubs and advocacy materials, and engaging in peer education and awareness-raising initiatives, they promote an enhanced understanding of the hidden face of violence and support the development of child-sensitive approaches that enhance the effectiveness of violence prevention and responses.

76. Dialogue and regular consultations with children and young people will remain a core component of the Special Representative's mandate. In this regard, the Special Representative welcomes the adoption by the Committee on the Rights of the Child of its General Comment No. 12 (2009) on the right of the child to be heard, which, as acknowledged by the General Assembly in resolution 64/146, is a valuable reference for the contribution of children and young people to the process of follow-up to the study and for informing them about developments in this area.

VI. Key developments and initiatives promoted

77. Framed by the priority agenda identified above, through global advocacy and meetings held in 20 countries, the Special Representative devoted particular attention to:

(a) Global advocacy initiatives to promote the further dissemination of the United Nations study and the follow-up to its recommendations at the international, regional and national levels;

(b) The consolidation of strategic partnerships, including by strengthening institutional collaboration with international and regional organizations and by contributing to high-level meetings with key actors;

(c) The establishment of her Office and mobilization of support to her mandate.

A. Address to the General Assembly at its sixty-fourth session and to the Human Rights Council at its thirteenth session

78. In her address to the Third Committee on 14 October 2009, at the sixty-fourth session of the General Assembly (see A/C.3/64/SR.13), the Special Representative recalled the human rights foundation and the framework provided for her mandate by the study and its recommendations; and she presented the key priority areas for her work, namely, the development of a national strategy to prevent and respond to violence against children, the adoption of an explicit national legal ban on all forms of violence against children, and the consolidation of research and data systems in this area.

79. These dimensions were further considered at the thirteenth session of the Human Rights Council, during the Special Representative's interactive dialogue with the Council and her participation in the panel discussion on sexual violence against children. Member States provided very positive feedback on her core agenda and expressed commitment to supporting her mandate. This was critical to shaping the work ahead and promoting a fruitful collaboration with governments across regions.

80. These two United Nations meetings provided a strategic forum for the Special Representative to join hands with Member States, United Nations agencies, regional organizations and civil society and child-led organizations in arranging high-level events designed to raise awareness, promote cross-fertilization of experiences and encourage further progress in crucial areas of the Special Representative's agenda — these include the development of national strategies to prevent and address violence in all settings, the enactment of effective legislation, and the promotion of gender-sensitive and child-participatory approaches, as well as the promotion of universal ratification and effective implementation of international children's rights standards.

B. Participation in the twelfth United Nations Congress on Crime Prevention and Criminal Justice

81. The Special Representative's participation, in April 2010, in the Congress and in the Latin American Seminar on Juvenile Justice, hosted in parallel by the Government of Brazil, provided a strategic platform to address situations of violence experienced by child victims of crime and children deprived of liberty.

82. As highlighted by those meetings, child victims of violence are still too often criminalized and not protected as children, including as a result of trafficking and sexual exploitation. Marginalized children, including migrant and asylum-seeking children, are often subject to physical, psychological and sexual violence, denied access to legal assistance and placed in detention as a substitute for care arrangements. Thousands of children are subjected to deprivation of liberty, frequently used as a first option rather than a measure of last resort; they risk torture, abuse and humiliating treatment, including when placed in pretrial detention, and endure violence as a form of control, discipline or punishment; in some countries, sentencing can include caning, flogging, stoning or amputation, as well as capital punishment and life imprisonment without possibility of release.

83. The situation of those children remains hidden and surrounded by stigma, and is seldom envisaged as a priority in the policy agenda. There is scarce information on the numbers of children deprived of liberty and on the reasons that lead to their placement in justice and care institutions; independent monitoring mechanisms are rarely available to safeguard their rights and address their complaints; and sensationalistic information, combined with ill perception of growing juvenile delinquency, fuel social pressure for the criminalization of children and adolescents, and for the introduction of increasingly lower ages of criminal responsibility and longer measures of deprivation of liberty. This is a pattern that helps to create a culture of tolerance of violence against children, and which often contributes to the stigmatization of children belonging to poor and disadvantaged groups.

84. In this overall scenario, the Convention on the Rights of the Child and other human rights standards run the risk of being relegated to a second tier, and the fight against impunity for acts of violence against children is confronted with renewed challenges.

85. These are critical concerns the Special Representative will continue to address in the context of her mandate and missions.

C. Cooperation with intergovernmental and regional organizations and institutions

86. The widely participatory regional consultations organized in support of the United Nations study and the preparations for the Third World Congress against Sexual Exploitation of Children and Adolescents were instrumental in generating interest in and commitment to the elimination of violence in its many forms. In some regions, a regional follow-up mechanism was set up to facilitate coordination of efforts and promote progress in this area.

87. Building upon these significant developments, the Special Representative gave priority attention to strengthening institutional collaboration with regional institutions and organizations, aiming at the promotion of information-sharing and cross-fertilization of experiences, the scaling-up of positive initiatives, and the development of evidence-based approaches to overcome challenges and influence progress within and across regions.

88. With that aim, the Special Representative took part in strategic, high-level regional conferences and has pursued the strengthening of partnerships with regional organizations and institutions. This is an area where significant developments have taken place, with a growing institutionalization of regional governance structures and the development of regional strategies to promote and monitor progress in the follow-up to the study's recommendations. This is meaningfully illustrated by the decisive improvements made across regions, including by the South Asian Initiative to End Violence against Children, the League of Arab States Sub-Committee on Violence against Children, the Organization of the Islamic Conference, the Council of Europe Strategy for 2009-2011: Building a Europe for and with Children, the Pan American Child Congress, the Latin America and Caribbean Chapter of the Global Movement for Children, and by the African Union and the African Committee of Experts on the Rights and Welfare of the Child.

1. XX Pan American Child Congress

89. In September 2009, the Special Representative participated in the XX Pan American Child Congress, organized by the Organization of American States and the Inter-American Children's Institute, and hosted in Lima by the Government of Peru. With high-level participation from member States, as well as from national independent institutions for children's rights, non-governmental organizations and academics from the Americas, the Congress was held in commemoration of the twentieth anniversary of the adoption of the Convention on the Rights of the Child and of the eighth anniversary of the Inter-American Children's Institute. Strong attention was devoted to public policies for the realization of children's rights, including the protection of children from violence. Violence against children was also centre stage in the official sessions and in the formal dialogue between ministers and high authorities, and the Special Representative and the Rapporteur on the Rights of the Child of the Inter-American Commission on Human Rights, Professor Paulo Sérgio Pinheiro.

90. The Congress was a strategic forum to advance progress in the Americas on follow-up to the recommendations of the study, and to launch the "Report on Corporal Punishment and Human Rights of Children and Adolescents", issued by the Inter-American Commission on Human Rights.[4] This important report builds upon the United Nations study and calls on States members of the Organization of American States to place explicit and absolute legal bans on the use of corporal punishment in all settings; adopt preventive, educational and other measures to ensure the eradication of this form of violence; and promote positive and non-violent alternatives; and make the Americas a region free of child corporal punishment by 2011.

91. The Pan American Child Congress was preceded by a civil society forum and included, for the first time, a Pan American Forum on Children. The Forum placed high on the agenda of the Congress the questions of child participation and children's protection from violence — indeed, violence against children was identified as their most pressing concern.

92. The deliberations of the Congress informed a significant process of follow-up, which has led to the promotion in several countries of initiatives to introduce a comprehensive legal prohibition of all forms of violence against children; and to the establishment of national consultative councils to institutionalize children's participation in decision-making.

93. The Congress also laid the ground for a solid institutional collaboration with regional forums and institutions in the Americas, including the Inter-American Children's Institute and, in particular, the Rapporteur on the Rights of the Child of the Inter-American Commission on Human Rights, with whom a strategic framework of cooperation was developed for the protection of children from all forms of violence.

[4] Document OEA/Ser.L/V/II.135.

2. Twelfth Ibero-American Conference of Ministers and Authorities Responsible for Children

94. The Special Representative participated in the Twelfth Ibero-American Ministerial Meeting, held in June 2010 in Buenos Aires, and devoted to the role of education in the promotion of children's social inclusion. Her address placed special attention on the impact of school violence on children's safety and learning achievement, which is often aggravated by surrounding factors, including social unrest, availability of weapons and gang-related criminal activities.

95. Recognizing the importance of violence prevention, she called for steady investment in early childhood education to ensure the development of children's talents and abilities to their full potential, to break the cycle of poverty and disadvantage for young people and to promote their social inclusion. Young children are indeed at particular risk of violence and they are also less able to resist and seek protection; fear and trauma compromise their development and threaten their sense of security and trust. Conversely, loving, secure and stimulating relationships of young children with their families and caregivers build a foundation for their physical, emotional and intellectual development and enhance their confidence and free agency.

96. Recalling the still frequent perception of violence as a needed form of discipline and the insufficient attention given to this phenomenon by laws, policies and school institutions, she placed a special emphasis on the adoption of legislation to firmly ban all violence in schools; the development of awareness-raising and capacity-building initiatives for professionals; the promotion of mediation and conflict resolution through non-violent means; as well as the promotion of participatory processes with the involvement of all stakeholders, including children themselves.

97. The Buenos Aires Declaration, adopted by the Ministerial Meeting, echoed some of those concerns, having specifically recommended the development of effective laws and policies for the protection of children from violence, in line with the recommendations of the United Nations study. Violence against children was equally identified as a priority concern to be included in the agenda of future ministerial meetings.

3. Regional meeting on the role of parliamentarians in preventing and eliminating violence against children

98. The National Assembly of Costa Rica, supported by the Inter-Parliamentary Union (IPU) and UNICEF, in 2009 convened an important regional meeting on the role of parliamentarians in the prevention and elimination of violence against children. The meeting called upon national parliaments to promote the organization of a national debate to monitor and advance follow-up to the study's recommendations, the adoption of law reform to explicitly ban all forms of violence against children, and the allocation of adequate resources in support of child-related public policies.

99. These key dimensions constitute a core agenda that the Special Representative is committed to pursuing across regions and in close collaboration with IPU and UNICEF. They provide a sound reference for her official meetings with national parliaments, as was the case in Peru and Turkey; and they informed her address to

the 122nd IPU Assembly, held in March 2010 in Bangkok, and attended by representatives from over 120 countries.

4. Cooperation with the Latin America and Caribbean Chapter of the Global Movement for Children

100. Decisive steps were taken to consolidate regional collaboration and agree on a strategic action plan on violence against children with the Latin America and Caribbean Chapter of the Global Movement for Children, in which UNICEF and key civil society organizations participate.

101. Following an important planning meeting in December 2009 with members of the Movement, the Rapporteur on the Rights of the Child of the Inter-American Commission on Human Rights, the Committee on the Rights of the Child and OHCHR, it was agreed to pursue a joint strategic regional agenda aiming at the adoption of legislation to prohibit all forms of violence against children; the development of a comprehensive, well-coordinated and well-resourced national strategy; and the consolidation of research and data systems in this area.

102. In the follow-up meeting held in Argentina in June 2010, it was agreed to organize three high-level subregional meetings in 2011 to promote cross-fertilization of experiences and scale up initiatives in those three areas.

5. Cairo Conference on the Convention on the Rights of the Child and Islamic Jurisprudence, co-sponsored by the Organization of the Islamic Conference and UNICEF

103. In November 2009, the Special Representative participated in the conference organized under the patronage of the First Lady of Egypt to commemorate the twentieth anniversary of the Convention on the Rights of the Child and the National Council for Childhood and Motherhood of Egypt.

104. The meeting was co-sponsored by the Organization of the Islamic Conference (OIC) and UNICEF, and associated representatives of international organizations, the Committee on the Rights of the Child, national human rights institutions, NGOs and children from 10 OIC countries.

105. Through the Cairo Declaration on the Convention on the Rights of the Child and Islamic Jurisprudence, adopted at the Conference, participants renewed their commitment to children's rights, calling for greater compliance with the Convention on the Rights of the Child, the provision of adequate human and financial resources for its implementation and the establishment of effective data systems on children.

106. Specifically on violence against children, participants expressed commitment to developing productive cooperation with the Special Representative and providing her with the necessary technical and financial support. They called on States members of OIC to take all appropriate legislative, social and other measures for effective follow-up to the study's recommendations; urgently reform legislation to ensure the prohibition of all forms of violence and the promotion of positive, non-violent forms of discipline; and, on the basis of positive national experiences, establish a high-level focal point to coordinate actions to prevent and combat violence, and develop a well-resourced national strategy on violence against children. Special attention was also given to prevention and protection from harmful

practices, protection of children under occupation and in times of war, and poverty alleviation.

107. The Cairo Declaration provides an important platform for States members of OIC and civil society organizations to strengthen the protection of children from violence and support the further implementation of the study's recommendations. With its specific call for the establishment of a children's forum, it opens up avenues for children's genuine contribution to this process, while helping to keep children duly informed of developments in this area.

6. Cooperation with the League of Arab States Sub-Committee on Violence against Children

108. The Special Representative participated in the high-level meeting of the League of Arab States, hosted in June 2010 by the Government of Lebanon. The meeting reviewed progress achieved by Arab nations in the implementation of the recommendations of the United Nations study with a view to strengthening the process of follow-up at the national level.

109. The meeting was framed by the findings of the League of Arab States regional study on violence against children, which is the first region-wide initiative on the follow-up to the study. With its analysis of national developments and identification of areas where further action is required, the study provides a foundation to inform legal and policy reforms, and support violence prevention initiatives. The study will be presented at the next Ministerial Meeting of the League of Arab States, at which time a follow-up agenda is expected to be endorsed.

110. Law reform had been one of the areas identified by the regional study as requiring further progress; for that reason, a technical workshop was held on the same occasion on this topic, with the support of Save the Children and the Global Initiative to End All Corporal Punishment of Children. Similar expert discussions are being promoted in other regions in support of the adoption of a legal ban on all forms of violence.

7. Cooperation with the African Union and the African Committee of Experts on the Rights and Welfare of the Child

111. At the end of November 2009, the Special Representative held important meetings in Addis Ababa with the Commissioner for Social Affairs of the African Union and the Chairperson of the African Committee of Experts on the Rights and Welfare of the Child, with a view to promoting collaboration in the protection of children from all forms of violence. Violence against children has been high on the policy agenda of the African region, including in the context of the implementation of the African Charter on the Rights and Welfare of the Child; during the drafting of the study and when the Day of the African Child 2006 was devoted to this topic; and during the 2007 Second Pan-African Forum on Children and in "The Call for Accelerated Action to Make Africa Fit for Children", adopted by the Forum. With the follow-up to the study, renewed opportunities exist to move this agenda forward.

112. The meetings held in Addis Ababa laid the ground for fruitful institutional collaboration, including for promoting initiatives to map out positive initiatives across the region and within States members of the African Union, supporting legislative reforms to prohibit all forms of violence, encouraging the development of

independent institutions on children's rights, and further consolidating national information and data systems on violence against children.

113. This collaborative framework was further strengthened during the thematic debate on violence against children, held in 2010 by the African Committee of Experts on the Rights and Welfare of the Child. The meeting identified three key areas for follow-up, namely: advocacy on the protection of children from violence and the promotion of positive alternatives to violent discipline; support to legislative and policy reforms to prohibit all forms of violence; and development of an African report on this topic.

8. Cooperation with the Council of Europe

114. In the European region, significant developments have also taken place, with violence against children being given increasing attention in policymaking within the Council of Europe and the European Union. The Special Representative consolidated collaboration with those institutions and took part in strategic policy forums addressing elements of her mandate. The Special Representative participated in meetings which led to the adoption of the Council of Europe Strategy for 2009-2011: Building a Europe for and with Children, within which the protection of children from violence is a key priority concern. Under the Strategy, the Council acts as the regional initiator and coordinator of national and regional initiatives to combat violence against children, and as the European forum for follow-up to the recommendations of the United Nations study and cooperation with the Special Representative.

115. Important regional standards and initiatives provide a framework for the protection of children from violence. To support progress in this area, the Council of Europe established a Platform on Children's Rights with national focal points from countries across the region and a network of experts from key partner organizations. The Special Representative participates in this high-level policy forum, which plays a crucial role in the promotion of information-sharing, advocacy and debate, and in monitoring progress within the European region.

116. In November 2009, the Committee of Ministers of the Council of Europe adopted Policy Guidelines on Integrated National Strategies for the Protection of Children from Violence to guide national efforts for the development of a comprehensive national agenda for violence prevention and response. The Special Representative participated in the process leading to the adoption of the guidelines and continues to collaborate with the Council of Europe in advancing their dissemination and implementation. In May 2010, the Government of Austria hosted a follow-up meeting, in Vienna, to share experiences among national governments, international organizations, independent institutions and civil society partners, and advance progress in the development of national strategies and law reform, and in the consolidation of information on violence against children.

9. Cooperation with the European Union

117. Violence against children is high on the policy agenda of the European Union and was identified in a 2009 survey as a priority concern for young people within the 27 member States. The Special Representative participated in two high-level conferences held under the Swedish Presidency of the European Union and devoted to the protection of children from violence, namely, the European Union-NGO

Forum on Human Rights and the high-level meeting of the Permanent Intergovernmental Group "L'Europe de l'Enfance".

118. The meetings called for the establishment of a strong partnership with the Special Representative and support to her Office; reiterated commitment to the implementation of the United Nations study's recommendations, including legal reforms to prohibit all forms of violence; the promotion of research incorporating children's own experiences and perspectives; the development of independent children's rights institutions and the establishment of effective complaints mechanisms. The meeting also recommended the use of development assistance programmes and funding mechanisms to support those efforts.

119. The Special Representative also pursued discussions with the representatives of the European Union on the implementation of its 2007 Guidelines for the Promotion and Protection of the Rights of the Child, which include a specific implementation strategy on violence against children framed by the study's recommendations.

120. With the entry into force of the Treaty of Lisbon, which explicitly identifies children's rights as a key dimension of the European Union's agenda, the protection of children from violence is expected to gain increasing attention, opening up avenues for accelerated action in follow-up to the study.

10. Cooperation with policymakers, experts and researchers in support of an evidence-based agenda

121. One key overarching recommendation contained in the United Nations study concerns the need for national improvements in child data systems and for national research on violence against children. Violence against children is an area where available information is limited and difficult to gather, thus failing to capture the true scale and extent of this phenomenon in society. Overall monitoring systems are weak, while research remains scattered and of widely differing quality.

122. To promote progress in this area, the Special Representative participated, in November 2009, in the Global Conference on Research and Child Rights in Addis Ababa, organized by the Childwatch International Research Network, the African Child Policy Forum and the UNICEF Innocenti Research Centre, in cooperation with the Committee on the Rights of the Child.

123. The Conference brought together an eminent group of government representatives, policymakers, experts and researchers committed to the protection of children's rights through evidence-based analysis, advocacy and public policies.

124. Violence against children was high on the agenda of the Global Conference, with a particular emphasis on the role of data, analysis and research in support of the follow-up to the study. These dimensions were considered critical to inform the development of national comprehensive strategies and of legal reforms; to break the silence around sensitive questions; to enhance understanding of risk factors and vulnerabilities; and to strengthen violence prevention.

125. Cooperation with academics and research institutions will continue to be pursued to consolidate progress in areas covered by the study, and to address emerging concerns, including the serious risks of violence faced by children on the move, as well as the potential and challenges presented by the use of new technologies in the protection of children from all forms of violence.

VII. Looking ahead

126. The mandate of the Special Representative is anchored by the United Nations study on violence against children and its action-oriented recommendations, which provide a strategic agenda to secure children's protection from all forms of violence, in all settings and in all nations.

127. As noted in the present report, significant developments have marked the initial period of the Special Representative's mandate — these include strategic initiatives undertaken by United Nations agencies to mainstream violence against children within their agenda; critical strides by regional organizations and political groups, and civil society networks to institutionalize the process of implementation of the recommendations of the study; and noteworthy improvements at the national level to protect children from violence.

128. Strong partnerships within and beyond the United Nations system have helped to consolidate this agenda with dynamic mobilization and support from stakeholders at all levels, including governments, national institutions, civil society organizations and children themselves.

129. In spite of this promising trend, however, violence against children remains widespread, largely hidden and still too often condoned by society. Recognizing that no violence is justifiable and all violence can be effectively prevented, the Special Representative is strongly committed to maintaining momentum around violence prevention and responses; increasing visibility and renewed concern at the harmful effects of violence on children; addressing social norms to encourage a process of positive behaviour and social change; and mobilizing political support to combat this phenomenon and achieve steady progress.

130. Guided by this mission and building upon the strong human rights foundation of her mandate, the Special Representative will, in the immediate future, give primary attention to the following dimensions:

(a) Advancing her two-year campaign for the universal ratification of the Optional Protocols to the Convention on the Rights of the Child, and promoting global adherence to other treaties aiming at children's protection from violence;

(b) Promoting progress in her three strategic areas of concern, namely, the development in each State of a comprehensive strategy on violence prevention and response; the adoption of an explicit national legal ban on all forms of violence against children, in all settings; and the consolidation of national data systems and research in this field;

(c) Supporting the development of a thematic report on safe, child-sensitive and accessible counselling, complaint and reporting mechanisms on violence against children, in line with Human Rights Council resolution 13/20.

131. The Special Representative looks forward to collaborating closely with Member States and all other relevant stakeholders to advance this critical agenda and achieve children's freedom from violence in all its forms.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Combating defamation of religions

Report of the Secretary-General

Summary

The present report is submitted in accordance with General Assembly resolution 64/156 and focuses on the implementation of the resolution, including the correlation between defamation of religions and the intersection of religion and race, the upsurge in incitement, intolerance and hatred in many parts of the world and steps taken by States to combat this phenomenon.

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I. Introduction

1. The General Assembly, in resolution 64/156, noted with deep concern the serious instances of intolerance, discrimination, acts of violence and incitement hereto based on religion or belief in many parts of the world, as well as the negative projection of certain religions in the media and the targeting of religious symbols. The Assembly also expressed concern over the frequent and erroneous association of Islam with human rights violations and terrorism and the stigmatization of persons with certain ethnic and religious backgrounds, particularly Muslim minorities, in the aftermath of the tragic events of 11 September 2001. The General Assembly urged States to take a series of measures to prevent and protect against acts of hatred, discrimination, intimidation and coercion resulting from defamation of religions and from incitement to religious hatred in general.

2. In paragraph 27 of resolution 64/156, the General Assembly requested the Secretary-General to submit a report to the Assembly at its sixty-fifth session on the implementation of the resolution, including the correlation between defamation of religions and the intersection of religion and race, the upsurge in incitement, intolerance and hatred in many parts of the world and steps taken by States to combat the phenomenon. The present report is submitted pursuant to that request.

3. Resolution 64/156 was adopted by a vote of 80 to 61, with 42 abstentions, attesting to the diversity of views in the international community on the subject. In explanations before and after the vote, States supporting the resolution pointed out that defamation of religions remained a serious concern and that constructive dialogue was needed to address it. States opposing the adoption of the resolution voiced concern that it could lead to a stifling of freedom of expression or argued that the concept of defamation of religions was inconsistent with human rights law, which protected individuals and not religions or belief systems. Some delegations also expressed reservations about the association of defamation of religions with racial discrimination.

4. On 2 October 2009, the Human Rights Council adopted, without a vote, resolution 12/16 on freedom of opinion and expression. Some of the paragraphs in the resolution can be interpreted as being relevant to the debate on the concept of defamation of religions.

5. While the scope of the present report is limited to General Assembly resolution 64/156, attention is drawn to previous reports on combating defamation of religions submitted, inter alia, by the Secretary-General (for example, A/63/365 and A/64/209), the United Nations High Commissioner for Human Rights and relevant special procedures of the Human Rights Council.

6. In the report submitted in accordance with resolution 63/171 (A/64/209), the Secretary-General noted that treaty bodies and special procedures had reported about serious instances of intolerance, discrimination and acts of violence based on religion or belief, such as the derogatory stereotyping and stigmatization of persons based on their religion or belief, and the negative projection and targeting of certain religions and religious symbols. They had recommended that strong emphasis be put on the implementation of the core obligations of States relating to the protection of individuals and groups of individuals against violations of their rights incurred by hate speech.

7. The Secretary-General expressed the view that many practices, including dissemination, incitement, stereotyping, profiling, stigmatization and the legitimation of discrimination were within the purview of the Convention on the Elimination of All Forms of Racial Discrimination. He also recalled the joint statement by a number of special procedures of the Human Rights Council, according to whom the ultimate goal was to find the most effective ways through which to protect individuals against advocacy of hatred and violence by others (see A/HRC/12/38, paras. 33-42). Hate speech was but a symptom, an external manifestation of something much more profound, which was intolerance and bigotry. Legal responses, such as restrictions on freedom of expression alone, were far from being sufficient to bring about real changes in mindsets, perceptions and discourse. In order to tackle the root causes of intolerance, a much broader set of policy measures was needed to cover the areas of intercultural dialogue as well as education for tolerance and diversity.

8. The Secretary-General noted, in this regard, the various activities of the United Nations Alliance of Civilizations in the areas of media, education, migration and youth. These included the creation of an online resource (www.globalexpertfinder.org) designed to connect journalists with a wide range of international experts in times of divisive intercultural tensions; the international fellowships programme of the United Nations Alliance of Civilizations, which enables young professionals from Europe, the United States of America and countries with a Muslim majority to learn about each other's societies and values; the creation of the "Dialogue Café" initiative, a global network of individuals from different cultural backgrounds who, via videoconference, share ideas and learn about each other; the education about religions and beliefs online community, which encourages the exchange of good practices in learning about diversity and tolerance; and the Youth Solidarity Fund's support for concrete projects involving youth in intercultural dialogue.

9. In addition to the reports requested by the General Assembly, the Human Rights Council requested the United Nations High Commissioner for Human Rights to report on the implementation of its resolution 10/22 on defamation of religions. The United Nations High Commissioner submitted her report (A/HRC/13/57) to the thirteenth session of the Council and concluded that the information received from States, regional organizations, United Nations entities, human rights treaty bodies and special procedures of the Council raised concern about acts of violence, protracted discrimination and stigmatization on the basis of religion or belief. Some contributions also suggested a negative portrayal of religion, as well as incitement to ethnic and religious hatred by some political parties and some media. In fact, religious minorities seemed to be frequent targets of abusive, violent and repetitive criticism against their group, often as a result of entrenched negative stereotypes.

10. Specific reference is also made to the study of the United Nations High Commissioner compiling existing legislation and jurisprudence concerning defamation of and contempt for religions (A/HRC/9/25) and her report submitted pursuant to Council resolution 7/19 on defamation of religions (A/HRC/9/7), both of which were submitted to the Council at its ninth session. From the compilation of contributions received from States, regional and non-governmental organizations, the United Nations High Commissioner concluded that most replies reflected the concern that there was a growing trend towards the negative portrayal of religion in the media and in political discourse and towards policies and practices that seemed targeted at persons because of their religion (para. 64).

11. Pursuant to Council resolution 7/19, the former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance submitted to the ninth session of the Council a report on the manifestations of defamation of religions, in particular on the serious implications of Islamophobia on the enjoyment of all rights (A/HRC/9/12). The current Special Rapporteur has submitted reports, pursuant to Council resolutions 10/22 and 13/16, on the manifestations of defamation of religions, in particular on the serious implications of Islamophobia on the enjoyment of all rights by their followers, to the twelfth (A/HRC/12/38) and the fifteenth (A/HRC/15/53) sessions of the Council.

12. Attention is further drawn to reports of the Secretary-General, the United Nations High Commissioner and the relevant special procedures of the Human Rights Council, including on incitement to racial and religious hatred and violence (A/HRC/2/3, A/HRC/10/31/Add.3); promotion of tolerance (A/HRC/12/36); protection of minorities (A/HRC/10/38 and Corr.1, A/HRC/13/23); human rights and counter-terrorism (A/64/186, A/HRC/13/36); intercultural and interreligious dialogue (A/64/325); and the elimination of religious intolerance (A/HRC/13/40, A/HRC/10/8). These reports, prepared at the request of the General Assembly and the Council, have provided additional context and a useful background for the present report.

13. In respect of General Assembly resolution 64/156, notes verbales were sent to Member States to solicit information by 7 May 2010 on measures and activities undertaken to combat defamation of religions. The present report contains information[1] received from States on various elements described in the resolution. In addition, the report updates the previous report of the Secretary-General on the topic (A/64/209) and the report of the United Nations High Commissioner (A/HRC/13/57) by informing on the latest developments at the level of the Office of the United Nations High Commissioner for Human Rights (OHCHR), human rights treaty bodies and special procedures. The intersection of religion and race is addressed throughout the chapters below.

II. Information received from Member States

Algeria

[Original: French]

14. Algeria gave information on the relevant constitutional provisions and international human rights instruments that it had ratified, and which are directly applicable and can be invoked by citizens and migrant workers. In the area of national legislation, it reported that Ordinance 06-03 established the conditions for practising religions other than Islam. The Ordinance guaranteed freedom of religion, as well as tolerance and respect among different religions and the protection of non-Muslim religious organizations by the State.

15. Article 298 of the Criminal Code declares punishable with imprisonment and a fine all instances of defamation or insults committed against one or more persons belonging to an ethnic or philosophic group, or to a religion, provided such

[1] The original replies are available for consultation at the Secretariat.

defamation is intended to incite to hatred among citizens or residents. Any offence to the Prophet or denigration of Islam and its teachings, by whichever medium, is punishable with three to five years' imprisonment, as well as a fine.

16. The voluntary degradation, destruction or profanation of places of worship is also punishable with deprivation of liberty and a fine, in accordance with article 160 ter of the Criminal Code. Prison sentences and fines are also established for the desecration of cemeteries.

17. Ordinance 90-07 on the right to information imposes an obligation on reporters to refrain from directly or indirectly disseminating racist, intolerant or violent messages. Article 77 of the Ordinance establishes fines and prison sentences for reporters who insult Islam or other holy religions. Article 99 grants tribunals the authority to order the provisional or definitive closure of information outlets acting in violation of the ordinance.

Azerbaijan

[Original: Russian]

18. Azerbaijan reported on its Law on Religious Freedom, which stipulates that freedom of religion can only be restricted by law for the protection of democracy, public safety, health, morals or the rights and freedoms of others.

19. The main executive body with regard to issues related to religion is the State Committee for Work with Religious Organizations. In 2007, in order to enhance dialogue and cooperation, a Consultative Council was established under the Chairman of the Committee, with the participation of the leaders of the main religious denominations.

20. The Committee, together with the Council, organized over 20 seminars to prevent religious intolerance. Routinely, seminars, lectures and round tables are held to promote tolerance and prevent incitement. In November 2009, an international conference on interreligious dialogue was held in Baku.

Bosnia and Herzegovina

[Original: English]

21. Bosnia and Herzegovina emphasized its heritage of ethnic, cultural and religious diversity and its commitment to multicultural dialogue. Information was provided on relevant constitutional and legislative provisions guaranteeing equality and respect for human rights. The European Convention on Human Rights and Fundamental Freedoms, which, in its article 14, prohibits any form of discrimination, is directly applicable, as is its Protocol 12 on the general prohibition of discrimination. A law on anti-discrimination was adopted to create a domestic legal framework for equal rights and protection against discrimination.

22. The Law on Freedom of Religion and Legal Position of Churches and Religious Communities in Bosnia and Herzegovina ensures that all churches and religious communities have equal rights and duties, without discrimination, and condemns all forms of intolerance and discrimination based on religion or belief. Bilateral agreements were signed with the Holy See in 2006 and with the Serbian

Orthodox Church in 2008 on the basis of this legislation. The process for a similar agreement with the Islamic Community is under way. The Interreligious Council of Bosnia and Herzegovina issued a glossary of religious terms to enhance a better understanding of diversity.

23. Religious buildings destroyed or damaged during the war in Bosnia and Herzegovina are being reconstructed. The country's Criminal Code now criminalizes the destruction of cultural, historical and religious monuments in its article 183. In 2009, 22 cases of damage to religious buildings and 6 cases of damage to burial sites were recorded by the authorities, a decline from previous years. Also in 2009, 15 criminal acts motivated by ethnic or religious hatred were recorded, a decline of 22 per cent in comparison to the previous year, and perpetrators were identified in 60 per cent of the cases.

Georgia

[Original: English]

24. Georgia reported on the legislative, administrative and other measures it has adopted to eradicate all forms of racial discrimination, including religious intolerance, which is a priority for the Government. Adding to its constitutional guarantees, Georgia adopted a Law on Freedom of Speech and Expression in June 2004. While recognizing freedom of speech and expression, the law also regulates restrictions to this right.

25. Religious minorities are protected through Georgia's Criminal Code which declares punishable the infringement on freedom of religion and protects against the insult of religious feelings of a believer. The dissemination of discriminatory, racist and xenophobic ideas by print, audio-visual and electronic media, including the Internet, is also criminalized. Moreover, racial, religious, national and ethnic motives are considered aggravating circumstances for sanctioning purposes.

26. Institutional mechanisms have been established to eliminate discrimination on the basis of religion. A Civil Integration and Tolerance Council was created in 2005 to study and analyse a wide range of initiatives in the areas of tolerance and integration and to engage society in a dialogue around these issues. In addition, a comprehensive national integration strategy and action plan is being developed by the Government to further civil integration and the protection of ethnic and religious minority rights. In 2005, the Public Defender Council of Religions was created to take effective and coordinated action against intolerance and extremism.

27. Ethical standards for law enforcement agencies prohibit discrimination and insults on racial, religious or other grounds. Law enforcement agents also receive human rights training. The Prosecutors' Code of Ethics specifically regulates hate speech.

28. Georgia guarantees freedom of expression in education. However, schools are allowed to introduce reasonable, proportionate and minimal rules to restrict students' right to freedom of expression in case of peril (which includes incitement to ethnic or religious hatred).

Guatemala

[Original: Spanish]

29. Guatemala reported that the spiritual practices of the indigenous people had historically been prohibited or disdained, but that, at the present time, freedom of religion was an integral element of the country's vision of a culture of peace and the creation of a multicultural, multi-ethnic and multilingual State. Guatemala's constitutional guarantee of freedom of religion is limited only by public order imperatives and the need to respect other beliefs. Every individual and community has the right to its cultural identity in accordance with its own values, language and customs. The specificity of Maya spirituality is also acknowledged in the Peace Agreement on the Identity and Rights of Indigenous Peoples signed by the Government of Guatemala.

30. A number of legislative, institutional and policy measures further protect freedom of religion and belief. Article 202 bis of the Criminal Code, adopted in implementation of the Durban Declaration and Programme of Action, criminalizes discrimination, including on the basis of religion, and establishes penalties from fines up to prison sentences of one to three years. The sanction is aggravated in the event of discrimination motivated by culture or ethnicity, in the event of incitement to discrimination and when discriminatory acts are committed by public service agents in the course of their duty.

31. Guatemala established the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA) to overcome cultural racism, negative stereotyping and discriminatory practices through information campaigns and media monitoring. In 2008, a public information campaign touted the message "Overcome prejudice and celebrate diversity" and advocated the acceptance of all aspects of identity, including language, dress, spiritual practice, religion and cultural traditions. From 2006 to 2009, CODISRA also organized workshops for opinion-makers, which addressed religious bias and bigotry as well as racist speech about indigenous peoples, their beliefs and spirituality.

32. The Guatemalan Ministry of Culture and Sports has adopted a long-term national plan for cultural development, which includes marking important dates on the Maya calendar and organizing informational events on cultural expression. The Ministry also works with public and private schools to educate students about the spiritual beliefs and practices of the Maya.

Islamic Republic of Iran

[Original: English]

33. The Islamic Republic of Iran noted that Iranian society was a successful example of fraternal and friendly cohabitation between different people. Equal rights are guaranteed by article 19 of its Constitution. Dialogue among religions, a State policy ratified by the State Expediency Council, fosters mutual understanding, strengthens common ground and prevents religious feuds.

34. The Islamic Human Rights Commission, established in 1994 to protect and promote human rights, has implemented a number of initiatives to combat ethnic

and religious discrimination and to promote harmony and tolerance while maintaining and reinforcing national solidarity and culture.

35. The Islamic Republic of Iran expressed its deep concern over what it described as the rising trend of discrimination on the basis of religion in some western countries, as well as increasing Islamophobia and xenophobia. Invoking reports by human rights entities, Iran pointed to instances of intolerance, discrimination and acts of violence motivated by the religion of the victim. The Islamic Republic of Iran submitted that the demonic portrayal of Islam and Muslims had caused tremendous suffering. Ascertaining a correlation between defamation of religions and the upsurge in incitement, intolerance and hatred, the Islamic Republic of Iran called for the adoption of national action plans and sustained campaigns to root out defamation of religions.

Kazakhstan

[Original: English]

36. Kazakhstan reported that it had established a legislative framework to guarantee equal rights for all citizens, regardless of their religious or ethnic background, in collaboration with the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe.

37. In 2007, Kazakhstan adopted a programme to guarantee religious freedom and improve relations between the State and religions. In addition to the programme, working groups on agitation and propaganda have sought to strengthen a culture of tolerance. The Government's Council on Relations with Religious Bodies, the Committee for Religious Affairs of the Culture Ministry, and the Ombudsman, in cooperation with non-governmental organizations and religious groups, have worked to further resolve possible conflicts between non-traditional religious organizations and local authorities.

38. Kazakhstan reported that it had hosted the Congress of Leaders of World and Traditional Religions in 2003, 2006 and 2009. The third Congress, which resulted in the adoption of a global appeal, addressed the role of religious leaders in building a world based on tolerance, respect and cooperation.

Romania

[Original: English]

39. Romania presented information on its constitutional provisions guaranteeing freedom of religion. The Romanian National Council for Combating Discrimination is mandated to sanction all forms of discrimination.

40. As for legislative measures, article 40 of Law No. 504/2002 on the Audiovisual forbids the broadcasting of programmes containing incitement to hatred on the grounds of race, religion, nationality, gender or sexual orientation. Moreover, the National Council of the Audiovisual is authorized to withdraw a broadcaster's audio-visual licence in the event of incitement to national, racial or religious hatred. Law No. 489/2006 ensures religious freedom for individuals as well as institutions

and forbids any forms, means, acts or actions of defamation or religious hatred, as well as public offence against religious symbols.

41. Romania has also invoked a number of executive decisions that seek to prevent and sanction all forms of discrimination, including discrimination on the basis of religion, and to combat incitement to national, racial or religious hatred. The Emergency Government Ordinance No. 31/2002, for example, bans organizations and symbols of a fascist, racist or xenophobic character.

Russia Federation

[Original: Russian]

42. The Russian Federation pointed out that its Constitution prohibits all forms of discrimination. Article 19 guarantees equal rights for all citizens, regardless of sex, race, nationality, language, origin, property, official status, place of residence, religion, belief, membership in public associations, or any other circumstance. Freedom of religion or belief is protected by article 28 of the Constitution. Article 55 (3) stipulates that human rights may be limited by federal law when necessary for the protection of the Constitution, morality, health, the rights and lawful interests of other people, in defence of the country, or for the security of the Russian State.

43. Article 13 (5) prohibits the creation and activities of public associations aiming to instigate social, racial, national or religious discord. Article 29 (2) prohibits propaganda or agitation that incites social, racial, national or religious hatred and hostility and bans propaganda of social, racial, national, religious or linguistic superiority. While article 29 (4) guarantees freedom of mass communication and prohibits censorship, this freedom may not be abused to incite, inter alia, national, social, religious hatred or hostility. A federal law of 2002, on countering extremist activities, which was amended in 2006 and 2007, further addresses in detail incitement to racial, national or religious hatred and hostility, as well as the propaganda of superiority theories based on social, racial, national, religious or linguistic affiliation.

44. The Russian Federation also reported on provisions in its Criminal Code to protect against acts of racial, national and religious discrimination. Article 63 considers as an aggravating factor the commission of a crime for reasons of national, racial or religious hatred or enmity. Article 282 of the Code envisages sanctions for actions that incite hatred and humiliate human dignity.

45. The Russian Labour Code further prohibits discrimination in the workplace. The Family Code prohibits any limitation to citizens' rights to enter into marriage based on social, racial, national, linguistic or religious affiliation. The Law of Education of 1992 ensures equality with regard to access to education.

Serbia

[Original: English]

46. The Republic of Serbia, which considers respect for diversity a State objective, reported on its constitutional guarantees against discrimination on the basis of religion or belief, citing articles 21, 49 and 81 of the Serbian Constitution.

Constitutional protections are further strengthened by legislation such as the Law on the Prohibition of Discrimination and the Law on Churches and Religious Communities. The latter protects religious places, sites and shrines. It also stipulates that no one shall be harassed or discriminated against because of her or his religious beliefs, and enables positive discrimination in favour of religious communities with small congregations.

47. The Law on the Foundations of the Education System seeks to enhance mutual respect among different groups by encouraging children to cherish diversity. Serbia has hosted a number of events to promote understanding and respect, such as on the theme "European religious cultural heritage days". Training courses on human rights and minority rights are routinely organized for civil servants and emphasize the prohibition of discrimination. Information was also provided concerning respect for different religions and religious practices in the Serbian Armed Forces.

48. In terms of media broadcasting, legal provisions encourage programmes that foster religious tolerance. Following the agreement between the Radio Television of Serbia and representatives of traditional religions and religious communities, certain programmes are focused on the heritage of different religious communities.

49. Article 174 of the Serbian Criminal Code declares punishable with a fine or imprisonment up to one year the ridiculing of an individual or a group on racial, religious, ethnic or national grounds. Article 317 of the Criminal Code specifically criminalizes incitement to hatred. In 2008, 83 charges were filed alleging incitement to hatred. In 11 cases, the charges were dropped; in 40 cases the suspects were prosecuted; and in 31 cases the offenders could not be identified. Mockery of national, ethnic or religious symbols and the desecration of monuments, memorials or graves constitute aggravating circumstances for which the offender is punished with imprisonment of one to eight years. In 2008, 107 cases of desecration of graves were recorded. The Ministry of Religion has repeatedly condemned violence against places of worship of all religious communities.

50. Serbia submitted that 150 places of worship of the Serbian Orthodox faith, including churches and monasteries, had been destroyed in Kosovo and Metohija since it had come under the interim administration established in accordance with Security Council resolution 1244 (1999). According to its report, 10,000 icons, religious artefacts and objects used in religious service had been damaged or looted, while 256 Serbian Orthodox graveyards and 5,261 tombstones had been desecrated, leaving about 50 graveyards without undamaged tombstones. Serbia alleges that those acts were a way to blot out Christian cultural identity from Kosovo and Metohija.

Spain

[Original: English and Spanish]

51. Spain informed that it does not recognize the concept of defamation of religions because only individuals, and not religions, can be rights holders. Spain does, however, have advanced legislation to protect against incitement to religious hatred. In the 1998 case involving a bookseller who was put on trial for denial of crimes of genocide, the Spanish Constitutional Court deemed that the denial of historical facts as such was protected under the freedom to conduct scientific

research, which was, in turn, a form of freedom of expression. Nevertheless, denial statements deliberately intended to create hostility, to libel, defame, humiliate or to incite violence or hatred towards any group qualified under article 510 of the Criminal Code, which punishes, with a fine or prison sentence, anyone who incites discrimination, hatred or violence towards any group or association for reasons of racism, anti-Semitism or any other grounds based on ideology, religion or belief, or anyone who, knowing it to be false or showing reckless contempt for the truth, disseminates offensive information about groups or associations in connection with their ideology, religious beliefs or their members' ethnicity, race or national origin.

52. Article 523 of the Spanish Criminal Code punishes with imprisonment anyone who uses violence, threats, commotion or assault to impede, interrupt or disrupt religious acts, functions, ceremonies or celebrations. When the offence is committed in a place of worship this constitutes an aggravating circumstance. Article 524 condemns acts of profanation offensive to religious beliefs in a place of worship or during a religious ceremony and article 525 punishes anyone who, with the intention of offending members of a religious denomination, publicly mocks their dogmas, beliefs, rites or ceremonies. The same provision applies to offences towards those who do not profess any religion or belief. Article 607 also punishes crimes related to the total or partial destruction of national, ethnic, racial or religious groups, such as murder, assault, sexual assault and the dissemination, by any means, of any doctrine that denies or justifies such offences.

Switzerland

[Original: French]

53. Switzerland, recalling its contribution of 16 July 2009 to the report of the United Nations High Commissioner for Human Rights on defamation of religions (A/HRC/13/57), submitted to the Human Rights Council at its thirteenth session, reported that incitement to racial, ethnic or religious hatred was punishable under article 261 bis of the Swiss Criminal Code, which places limitations on freedom of expression for the protection of the dignity and honour of others.

54. The Government of Switzerland has adopted a series of measures to prevent incitement to hatred, such as information and educational campaigns. Since 2001, the Service against Racism has funded 800 projects against racism, anti-Semitism and xenophobia. The Federal Commission against Racism, created in 1995, has strived to eradicate racism and hatred through awareness-raising initiatives. The website of the Federal Commission against Racism includes a compilation of jurisprudence concerning article 261 bis of the Swiss Criminal Code and contains summaries of all sentences invoking this article.

55. Article 28 of the Swiss Civil Code protects individuals from illicit attacks on their personality. The concept of "personality" is construed as the set of values inherent to every human being. This article also protects individuals from defamation.

56. In its contribution, Switzerland rejected the notion of defamation of religions as a contemporary form of racism, noting that human rights ought to protect individuals only and that existing standards sufficiently address incitement to hatred. Switzerland noted that the concept of defamation of religions was not recognized in international law. It further expressed the view that recognizing the

concept of defamation of religions as a contemporary form of racism would de facto alter the definition of racism by adding a religious dimension, which it does not, at present, include.

Togo

[Original: French]

57. Togo reported that its Ministry of Territorial Administration, Decentralization and Local Collectivities has started drafting legislative proposals aimed at establishing a regulatory framework for issues related to religion and the promotion of a culture of peace. In addition, financial support is being sought for projects involving religious leaders, with a view to fostering dialogue and peaceful coexistence among different religious communities in the country.

United States of America

[Original: English]

58. The United States of America, recalling its contribution of 12 August 2009 to the report of the United Nations High Commissioner for Human Rights on defamation of religions (A/HRC/13/57), submitted to the Human Rights Council at its thirteenth session, confirmed its position that the concept of defamation of religions was inconsistent with international human rights law since religions were not protected under human rights law and Governments had the obligation to protect freedom of expression.

59. However, the United States of America expressed its deep concern over the discrimination, targeting and ridiculing of individuals based on their religion. It also shared its concern about undue restrictions on places of worship and religious attire. In addition, it expressed that Governments have a moral responsibility to speak out and condemn intolerance when certain actions wilfully exploit tensions or perpetuate negative stereotypes.

60. The United States of America submitted that the increased targeting of members of religious minorities and interreligious violence in virtually every region of the world called for concerted action to combat discrimination and intolerance. The tools to address those scourges included robust legal protections against discrimination and hate crimes, proactive Government outreach to members of minority groups, interreligious efforts, education and the vigorous defence of freedoms of religion and expression.

61. Recognizing the legitimate concerns about intolerance and discrimination underlying General Assembly resolution 64/156 on defamation of religions, the United States of America asserted that the resolution had failed to galvanize international support for real solutions. Rather than leading to greater respect and tolerance, it had become an instrument of division. Hence, the United States of America called for a new approach by the international community, which would command consensus in a spirit of constructive dialogue and demonstrate the potential of the Human Rights Council to effectively address global problems.

III. Office of the United Nations High Commissioner for Human Rights

62. In paragraph 25 of resolution 64/156, the General Assembly welcomed the initiative of the United Nations High Commissioner for Human Rights to organize an expert seminar on articles 19 and 20 of the International Covenant on Civil and Political Rights in Geneva on 2 and 3 October 2008. The Assembly requested the United Nations High Commissioner to build on the initiative, with a view to contributing to the prevention and elimination of all forms of incitement and the consequences of negative stereotyping of religions or beliefs on the human rights of adherents and their communities.

63. In follow-up to the above-mentioned expert seminar and pursuant to paragraph 134 of the Outcome Document of the Durban Review Conference (A/CONF.211/8, chap. I), the Office of the United Nations High Commissioner for Human Rights (OHCHR) will hold, in 2011, a series of expert workshops on the prohibition of incitement to national, racial or religious hatred. The objectives of the workshops are to gain a better understanding of legislative patterns, judicial practices and policies in different regions, to discuss the state of implementation of the prohibition of incitement in conformity with international standards and to identify possible actions at all levels. The expert workshops will be held at Vienna, Nairobi, Bangkok and Santiago. Prior to the workshops, States will be invited to provide OHCHR with updated information regarding the prohibition of incitement to hatred in national legislation, judicial practices and relevant policies. Member States and representatives of non-governmental organizations having consultative status with the Economic and Social Council will be invited to participate in the workshops as observers. The Office organized briefings on the expert workshops on 14 May 2010 for Member States in Geneva, on 20 May 2010 for Member States in New York and on 17 June 2010 for non-governmental organizations in Geneva.

64. As part of its programme against racism, racial discrimination, xenophobia and related intolerance, OHCHR has taken a number of initiatives to raise awareness and encourage measures to combat discrimination, intolerance and prejudice.

IV. United Nations human rights treaty bodies

65. In paragraph 10 of its resolution 64/156, the General Assembly emphasized that, as stipulated in international human rights law, everyone had the right to freedom of expression. The exercise of that right, however, carried with it special duties and responsibilities. It might therefore be subject to certain restrictions as were provided for by law and were necessary for respect of the rights or reputations of others and for the protection of national security, public order, public health or morals.

66. According to article 20, paragraph 2, of the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex), any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

67. In its examination of periodic reports, the Human Rights Committee has called on States parties to the International Covenant on Civil and Political Rights to vigorously combat any advocacy of racial or religious hatred, including political

hate speech, by intensifying public information and awareness-raising campaigns and ensuring the strict application by judges, prosecutors and the police of criminal law provisions punishing incitement to racial or religious hatred.

68. At its ninety-fourth session, held from 13 to 31 October 2008, the Human Rights Committee decided to revise its General Comment 10 on article 19 of the International Covenant on Civil and Political Rights on freedom of expression. A first reading of the draft general comment by the Committee took place in October 2009.

69. The Committee on the Elimination of Discrimination against Women has referred to the interface of religion and race when addressing discrimination against women in its concluding observations following the submission of periodic reports by States parties to the Convention on the Elimination of All Forms of Discrimination against Women. Specifically, the Committee has recognized the compounded vulnerability faced by women suffering multiple forms of discrimination based on sex and other grounds, such as ethnicity, religious affiliation or race. The Committee has, for instance, expressed concern that the ban of headscarves in schools, adopted in some countries, might increase the discrimination faced by girls and women from ethnic and religious minorities and impede their equal access to education. On other occasions, the Committee has expressed concern that prevailing trends of fundamentalism, intimidation and violence incited by non-State actors undermine the enjoyment by women of their human rights in the name of religion. Acknowledging the complex relationship between ethnicity and religion, the Committee on the Elimination of Discrimination against Women has also expressed concern about reported infringements of the right to freedom of religion as well as the risk that blasphemy laws may be used in a discriminatory manner against religious minority groups who may also be members of ethnic minorities.

70. With respect to hate speech, article 4 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 2106 (XX), annex) calls on States parties to the Convention to declare as an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.

71. Many discriminatory practices described by the General Assembly in its resolution 64/156, including stereotyping, profiling and stigmatization, are dealt with by the Committee on the Elimination of All Forms of Racial Discrimination. The Committee has made numerous references in its concluding observations to phenomena such as Islamophobia, including in reports thereon following the attacks of 11 September 2001, discrimination against Jews and Sikhs, discrimination against indigenous religions and the desecration of sacred sites, as well as other instances where it has found an overlap between religion and ethnicity.

72. In paragraph 11 of General Assembly resolution 64/156, the Assembly reaffirmed that general recommendation XV (42) of the Committee on the Elimination of Racial Discrimination (see A/48/18, chap. VIII, sect. B), in which the Committee had stipulated that the prohibition of the dissemination of all ideas based upon racial superiority or hatred was compatible with freedom of opinion and expression, was equally applicable to the question of incitement to religious hatred. In that general recommendation, the Committee on the Elimination of Racial

Discrimination referred to evidence of organized violence based on ethnic origin. In the same paragraph, the Committee drew the attention of States parties to article 20 of the International Covenant on Civil and Political Rights, which explicitly refers to religious hatred.

73. Relevant international human rights law also includes article 3 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide aimed at protecting the physical existence of religious, racial and cultural groups from incitement to violence in the most extreme meaning of that term.

74. Espousing the view that discrimination based exclusively on religious grounds does not explicitly fall within the scope of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of Racial Discrimination has searched for an "ethnic" or other connection or element of intersectionality between racial and religious discrimination before it has regarded its mandate as engaged.

75. This "intersection" was examined in two cases in 2007, both involving allegations of hate speech. The case of *P.S.N. v. Denmark* (2007) concerned alleged violations of articles 2, paragraph 1 (d), 4 and 6 of the Convention on the Elimination of All Forms of Racial Discrimination through statements published on a website by a Member of Parliament against immigration and Muslims, under the headline "Articles no one dares to publish". The opinions expressed were reiterated in an interview published in a newspaper, and some had been previously published in a book. The petitioner filed three complaints under the Danish Criminal Code, section 266b of which prohibits racial statements, on the grounds that the website statements targeted a specific group (Muslims), were degrading and propagandistic, and were published on a website directed at a large audience.

76. The State party argued against admissibility in that the case fell outside the scope of article 1 of the Convention in referring to Muslims, while acknowledging that it was possible to argue to a certain extent that the statements referred to second-generation immigrants and set up a conflict between "the Danes" and them, thereby falling to some degree within the scope of the Convention. The petitioner, however, contended that Islamophobia, just like attacks against Jews, had manifested itself as a form of racism in many European countries. Hatred, it was claimed, had been stirred up against peoples of Arab and Muslim background, and culture and religion were connected in Islam.

77. In its admissibility decision, the Committee observed that the impugned statements specifically referred to the Koran, to Islam and to Muslims in general, without any reference to the five grounds set out in article 1 of the Convention. Further, while the elements of the case file did not allow the Committee to ascertain the intention of the statements, it remained that no specific national or ethnic groups had been directly targeted, and that Muslims currently living in the State party were of heterogeneous origin. The Committee recognized the importance of the interface between race and religion and stated that it would be competent to consider a claim of "double" discrimination on the basis of religion and another ground specifically provided for in article 1, which was not the case with the current petition. The petition according to the Committee was based on religion alone, and Islam was not a religion practised solely by a particular group. The communication was therefore declared inadmissible. In the case of *A.W.R.A.P. v. Denmark* (2007), the Committee declared inadmissible a communication on similar grounds.

78. In 2010, at its seventy-sixth session, the Committee on the Elimination of Racial Discrimination considered its mandate engaged when it examined the situation in Nigeria under its early warning and urgent action procedure, alarmed by the reports of ethnic and religious violence near the city of Jos as a result of tensions between ethno-religious groups. The Committee strongly urged Nigeria, inter alia, to take all the appropriate measures to immediately stop the ethnic violence, to protect the victims and to avoid the repetition of such killings in the future, in compliance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination.

V. Special procedures of the Human Rights Council

79. In its resolution 64/156, the General Assembly addressed, inter alia, discriminatory practices, including stereotyping, profiling and stigmatization. The independent expert on minority issues, in the course of her country visits, has cautioned against increasing Islamophobia within mainstream society, stereotypes about Muslim women that fuel anti-Muslim sentiment and counter-terrorism measures that make members of Muslim and Arab communities feel targeted and harassed. The independent expert has received reports from these minorities describing discrimination and unfair and unjust treatment by authorities and the media. Moreover, these communities have shared with the independent expert their anxiety about speaking out and their fear of a backlash when seeking avenues for redress. In her mission reports, the independent expert has called on authorities to address these concerns, to answer allegations and to build positive relations of trust (A/HRC/13/23/Add.2, paras. 66-70). The independent expert has also called for the protection of the right to self-identification, freedom of expression and freedom of association of religious minority communities and has criticized building restrictions to places of worship (A/HRC/10/11/Add.3, paras. 90 and 103; A/HRC/13/23/Add.1, para. 89).

80. The independent expert has also addressed intolerance and hatred against non-Muslims, such as members of the Baha'i faith, the Catholic Church, Jehovah's Witnesses and the Jewish community (A/HRC/10/11/Add.3, paras. 29-39). For example, the independent expert has criticized prejudice and vocal anti-Catholic sentiment including by politicians and religious leaders, incidents of desecration, anti-Semitic attacks and anti-Semitic views expressed in the extreme right-wing press, in mainstream newspapers and by public figures. The independent expert has called for aggressive manifestations of nationalism and incitement to racial or religious hatred to be met with appropriate responses, invoking positive models of intercommunity dialogue, mediation and conflict prevention (A/HRC/13/23/Add.1, para. 91).

81. The independent expert has reported on complaints by civil society and religious groups that national security agencies have stigmatized religious minorities on the grounds of the fight against extremism and terrorism. In countries where, because of historic associations, some ethnic minorities are particularly linked with certain non-traditional faiths, concern has also been expressed that discrimination against religious groups may carry an ethnic dimension (A/HRC/13/23/Add.1, para. 64).

82. Addressing the intersectionality of religion and gender, the independent expert has pointed out that sharia law should not be imposed in a way that violates the right to equality of women guaranteed under international law (A/HRC/10/11/Add.3, para. 95).

83. As requested by the Human Rights Council in its resolution 13/16, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance submitted a report on manifestations of defamation of religions, in particular on the serious implications of Islamophobia for the enjoyment of all rights by their followers (A/HRC/15/53). In this context, he has received reports of incidents pertaining to the above-mentioned resolution. The reports appear to fall under five broad and non-exhaustive categories: (a) acts of violence or discrimination, or incitement thereto, against individuals on the basis of their religion or belief; (b) attacks on religious sites; (c) religious and ethnic profiling; (d) religious symbols; and (e) negative stereotyping of religions, their followers and sacred persons. These categories warrant different approaches under international human rights law, which provides sufficient tools to respond to all of them. In particular, the Special Rapporteur has distinguished between stereotyping of religions on one hand and of religious followers or sacred persons on the other. International human rights law protects individuals and groups of individuals and therefore guarantees the freedom of individuals and groups of individuals to exercise freely their religion or belief. However, vigorously interrogating and criticizing religious doctrines and their teachings is legitimate and constitutes a significant part of the exercise of the right to freedom of opinion or expression. The Special Rapporteur has therefore reiterated that domestic blasphemy laws aiming to protect religions per se could result in de facto censure of robust examination of religious doctrines and teachings and of interreligious and intrareligious criticism. Consequently, he has encouraged States to move away from the notion of defamation of religions towards the legal concept of advocacy of racial or religious hatred that constitutes incitement to discrimination, hostility or violence in order to anchor the debate in the relevant existing international legal framework.

84. In his latest report to the Human Rights Council (A/HRC/14/23), the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression recalled that the concept of defamation of religions did not accord with international standards regarding defamation, which referred to the protection of the reputation of individuals, while religions, like all beliefs, could not be said to have a reputation of their own. Considering that all human rights were universal, indivisible, interdependent and interrelated, the Special Rapporteur reiterated that it was conceptually incorrect to present the issue of defamation of religions in an abstract manner as a conflict between the right to freedom of religion and belief and the right to freedom of opinion and expression.

85. The Special Rapporteur on freedom of religion or belief noted that, while criticism of major religions attracted a lot of attention, numerous cases of incitement to violence against smaller religions could go relatively unnoticed (see A/HRC/13/40 and A/64/159). She argued that attention should be focused on addressing these cases of incitement to violence, in view of article 20 of the International Covenant on Civil and Political Rights, which obliged States to prohibit by law any advocacy of religious hatred that constituted incitement to discrimination, hostility or violence. However, the right to freedom of religion or belief did not include the right to have a religion or belief that was free from criticism or ridicule. The Special Rapporteur emphasized the important role of an independent judiciary, which needed to adjudicate in each particular case according to its own circumstances and taking into account the specific context. In addition, incitement to religious hatred could be an indicator of emerging tensions and the

relevant authorities should find the most effective ways to protect individuals against others' advocacy of hatred and violence.

86. In a press release issued on 28 May 2010, the Special Rapporteur on freedom of religion or belief, the independent expert on minority issues and the Special Rapporteur on extrajudicial, summary or arbitrary execution strongly condemned the targeted killings of at least 70 members of the Ahmadiyyah community in Pakistan. Noting the expressions of condemnation by senior leadership of Pakistan, United Nations experts highlighted the risk of recurring violence unless advocacy of religious hatred that constituted incitement to discrimination, hostility or violence was adequately addressed. They emphasized that it was up to the Government to ensure the security of members of all religious minorities.[2]

VI. Conclusion

87. **In its resolution 64/156 entitled "Combating defamation of religions", the General Assembly referred to a wide range of manifestations of intolerance, including acts of violence based on religion, xenophobic opinions, ideological superiority platforms, the propagation of religious hatred by extremist organizations, discrimination based on religion or belief, including multiple forms of discrimination against minorities, the stigmatization of religious communities under pretexts relating to security and irregular immigration, infringements on the right to practise one's religion freely and without fear, intimidation motivated by religious or other extremism, the negative stereotyping of certain religions by the media, counter-terrorism measures targeting Muslim and other minorities, ethnic and religious profiling, incitement to religious hatred, and the targeting of places of worship and religious symbols. In the resolution, the Assembly calls for measures to be taken by States and by the international community to prevent, combat and eradicate these scourges.**

88. **In their submissions, States reported on different elements of the resolution, focusing on the manifestations of intolerance of greatest importance to them and outlining relevant courses of action. In respect of religious defamation, some States adopted blasphemy laws while others firmly opposed such laws, considering them to be incompatible with international human rights law, a position that is also shared by the relevant special procedures of the Human Rights Council and the treaty bodies that have taken a position on the subject.**

89. **At the same time, treaty body findings and reports by special procedures of the Human Rights Council expressed alarm over discrimination and incitement to hatred against Muslim communities, while also highlighting restrictions, discrimination and incitement affecting other religious minorities in different parts of the world.**

90. **Intersectional identities that combine race or ethnicity with religious affiliation, and the multiple forms of discrimination resulting from this intersectionality were also increasingly recognized, as illustrated by the recent decision on Nigeria of the Committee on the Elimination of Racial**

[2] See http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10074&LangID=E.

Discrimination. The body of case law of the Committee on the Elimination of All Forms of Racial Discrimination nevertheless has shown that the Committee has only regarded its mandate engaged when religious grounds of discrimination were invoked in addition to the explicit grounds of race, colour, ethnicity, national or ethnic origin enumerated in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

91. **Finally, the Office of the United Nations High Commissioner for Human Rights, through a number of initiatives, has been seeking to make a concrete contribution to the prevention and the elimination of incitement to national, racial or religious hatred and to the fight against Islamophobia and other forms of intolerance.**

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Indigenous issues

Situation of human rights and fundamental freedoms of indigenous people

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, submitted in accordance with Human Rights Council resolution 12/13.

* A/65/150.

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Interim report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

Summary

The present report is submitted pursuant to Human Rights Council resolution 12/13. The report provides an overview of the activities carried out by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people between July 2009 and July 2010. In particular, it describes the Special Rapporteur's coordination with United Nations and regional human rights mechanisms and outlines initiatives undertaken within four interrelated spheres of activity: promoting good practices, thematic studies, country reports and cases of alleged human rights violations.

The report provides a brief discussion of three key issues that the Special Rapporteur has addressed during the past year, namely the right of indigenous peoples to development with culture and identity, the right of indigenous peoples to participation and the obligation of States to implement the United Nations Declaration on the Rights of Indigenous Peoples. These observations are intended as a complement to the work undertaken by the Permanent Forum and the Expert Mechanism on these important issues. The report also offers a number of conclusions and recommendations on the basis of the Special Rapporteur's examination of the substantive issues discussed in the report.

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I. Introduction

1. The present report is the second submitted to the General Assembly by the current Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya. The mandate of the Special Rapporteur was originally established by the Commission on Human Rights in 2001 and was renewed by the Human Rights Council in its resolution 6/12 of 28 September 2007.

2. The present report provides an overview of the activities carried out by the Special Rapporteur since he submitted his first report to the General Assembly (A/64/338). In particular, it describes the Special Rapporteur's coordination with United Nations and regional human rights mechanisms and outlines initiatives undertaken within four interrelated spheres of activity: promoting good practices, thematic studies, country reports and cases of alleged human rights violations. These activities are carried out within the framework of the Special Rapporteur's mandate to monitor the human rights conditions of indigenous peoples around the world and to promote steps to improve those conditions in line with relevant international standards.

3. The report also provides a brief discussion of three key issues that the Special Rapporteur has addressed during the past year, namely the right of indigenous peoples to development with culture and identity, the right of indigenous peoples to participation and the obligation of States to implement the United Nations Declaration on the Rights of Indigenous Peoples. These observations were originally presented as part of statements made by the Special Rapporteur during the ninth session of the United Nations Permanent Forum on Indigenous Issues in April 2010 and the third session of the Expert Mechanism on the Rights of Indigenous Peoples in July 2010. They are intended as a complement to the work undertaken by the Permanent Forum and the Expert Mechanism on these important issues.

4. The Special Rapporteur is grateful for the support provided by the staff at the Office of the United Nations High Commissioner for Human Rights (OHCHR). He would also like to thank staff and affiliated researchers of the Indigenous Peoples Law and Policy Program at the University of Arizona for their continued assistance with all aspects of his work. Finally, the Special Rapporteur would like to thank the many indigenous peoples, Governments, United Nations bodies and agencies, non-governmental organizations and others that have cooperated with him in his work.

II. Summary of activities

A. Coordination with other mechanisms

5. During the second year of his mandate, the Special Rapporteur has continued his commitment to work in cooperation with other mechanisms within the United Nations system with a mandate specific to indigenous peoples, in particular the United Nations Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples. This coordination is in accordance with Human Rights Council resolution 6/12, in which the Council specified close cooperation with the Permanent Forum on Indigenous Issues and participation in its

annual session as part of the mandate of the Special Rapporteur; and resolution 6/36, in which the Council decided that the Expert Mechanism should invite the Special Rapporteur to its annual session in order to increase cooperation and avoid duplication of work.

6. In January 2010, the Special Rapporteur, together with representatives of the Permanent Forum and the Expert Mechanism, met in New York as part of this ongoing coordination and cooperation. At that meeting, the experts exchanged information about their respective agendas and discussed ways to channel the various activities carried out under each of their mandates, in order to increase their effectiveness. Additionally, in January 2010, the Special Rapporteur participated in a regional consultation in Thailand organized by the Asia Indigenous Peoples Pact, which members of the Expert Mechanism also attended. During the conference, the Special Rapporteur offered observations on the right of indigenous peoples to participation in decision-making, which is the subject of the Expert Mechanism's annual thematic study. The Special Rapporteur's inputs on this subject are detailed in section IV of the present report.

7. An important result of the coordination between the mechanisms has been the parallel meetings held during the sessions of the Permanent Forum and the Expert Mechanism. During these parallel meetings, the Special Rapporteur provides an opportunity for representatives of indigenous peoples and organizations to present information about specific situations of allegations of human rights violations. The Special Rapporteur held parallel meetings during the ninth session of the Permanent Forum in April 2010 and during the third session of the Expert Mechanism in July 2010. During these sessions, the Special Rapporteur also met with representatives of various States and United Nations agencies to discuss opportunities for collaboration and specific cases concerning indigenous peoples.

8. During the past year, the Special Rapporteur has also sought to coordinate with other human rights bodies within the United Nations system. In this connection, the Special Rapporteur attended conferences in Trinidad and Tobago in December 2009 and in Thailand in December 2009 and January 2010, organized by the Office of the High Commissioner for Human Rights and the United Nations Development Programme. At the regional level, the Special Rapporteur has participated in two activities with the Inter-American Commission on Human Rights. In March 2010, he met with members of the Commission on methods of coordination and cooperation, and in June 2010 he co-organized and led a conference with the Commission that trained indigenous leaders from North America in international human rights mechanisms.

B. Areas of work

9. Throughout the second year of his mandate, the Special Rapporteur has continued to develop and refine his working methods and to engage in a constructive dialogue with Governments, indigenous peoples, non-governmental organizations, United Nations agencies and other stakeholders, in order to address issues brought to his attention concerning the human rights situation of indigenous peoples throughout the world. As in the previous year, the Special Rapporteur's activities have been carried out within four principal areas: promoting good

practices, thematic studies, country reports and allegations of human rights violations.

1. Promotion of good practices

10. The Special Rapporteur has continued to promote legal, administrative and policy reforms at the national level to advance implementation of the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples and other relevant international instruments, in accordance with Human Rights Council resolution 6/12.

11. This work has occasionally been performed at the request of individual Governments seeking technical advice in relation to legal and constitutional reforms concerning indigenous peoples' rights. For example, in December 2009, the Special Rapporteur visited Ecuador at the request of the Government to provide technical assistance in developing a new law aimed at coordination between indigenous justice systems and the State justice system. During the visit, the Special Rapporteur also reviewed the status of Ecuador's implementation of its Constitution of 2008, which contains several provisions recognizing the rights of indigenous peoples.

12. Also among the Special Rapporteur's activities to promote good practices is engagement with those States that did not originally vote in favour of adoption of the Declaration on the Rights of Indigenous Peoples in 2007. The Special Rapporteur is pleased to note that the Government of New Zealand officially declared its support for the Declaration during the ninth session of the Permanent Forum in April 2010. This statement of support followed Australia's formal endorsement of the Declaration in 2009. The Special Rapporteur has taken steps to engage with both these countries regarding the Declaration, during his visits to Australia and New Zealand in August 2009 and July 2010, respectively.

13. Additionally, Canada and the United States of America have declared that they are reviewing their positions on the Declaration. It is hoped these review processes will soon lead to similar expressions of endorsement, making opposition to the Declaration a thing of the past. The Special Rapporteur has emphasized to the United States and Canada that any formal statement should be made in a manner fully consistent with the Declaration's spirit and objectives.

14. On 24 and 25 May 2010, the Special Rapporteur participated in a seminar on multiculturalism and the oil and gas industry in Latin America and the Caribbean held in Cartagena, Colombia, organized by the Regional Association of Oil and Natural Gas Companies in Latin America and the Caribbean. The seminar provided an opportunity for the Special Rapporteur to dialogue with representatives of oil and gas companies, as well as with academics and members of civil society, on the obligations of private companies to respect international standards regarding indigenous peoples' rights.

15. Finally, in July 2010, the Special Rapporteur provided technical assistance for the process of developing a consultation law concerning indigenous peoples, which is currently under way in Colombia. The Special Rapporteur's input is part of an initiative launched by OHCHR, at the request of the Advisory Group of the Ministry of Interior and Justice of Colombia, to promote a participatory process for the development of a regulation on the State's duty to consult with indigenous peoples and Afro-Colombian communities.

2. Thematic studies

16. As the Special Rapporteur has stated in the past, given the specific mandate of the Expert Mechanism on the Rights of Indigenous Peoples to provide thematic expertise and recommendations to the Human Rights Council on issues affecting indigenous peoples, the Special Rapporteur sees his work carrying out thematic studies as secondary to other work under his mandate. Furthermore, the Special Rapporteur has endeavoured to engage in thematic research in ways that are complementary to and not duplicative of the work of the Expert Mechanism. In this connection, the Special Rapporteur has provided input to the Expert Mechanism for its current study on the right of indigenous peoples to participation in decision-making, which is discussed in more detail in section IV below.

17. However, the Special Rapporteur has also explored thematic issues in his annual reports to the Human Rights Council, including measures for operationalization of the United Nations Declaration on the Rights of Indigenous Peoples (A/HRC/9/9), the duty of States to consult with indigenous peoples (A/HRC/12/34) and the obligations of private companies to respect the rights of indigenous peoples when carrying out activities that affect them (A/HRC/15/37). As part of his examination of private company responsibility, about which he reported in his third annual report to the Council, the Special Rapporteur attended a meeting of experts in Sitges, Spain, organized by the UNESCO Centre of Catalunya and Kreddha (the International Peace Council for States, Peoples and Minorities), which examined methods to resolve the conflicts that often result from natural resource extraction activities on indigenous lands.

3. Country reports

18. The Special Rapporteur has continued to report on the overall situations of indigenous peoples in specific countries. The reporting process includes visits to the countries concerned, during which the Special Rapporteur meets with Government representatives, indigenous communities and other stakeholders. The country reports are intended to provide observations and recommendations to identify areas of concern and improve the conditions of indigenous peoples' human rights, as well as to strengthen good practices where these exist. Since his last report to the General Assembly, the Special Rapporteur has visited the Russian Federation, the Sápmi region (the traditional homeland of the Saami people spanning Norway, Sweden, Finland and parts of the Russian Federation) and New Zealand to report on the situations of indigenous peoples in these places.

4. Allegations of human rights violations

19. Regarding the fourth area of work, the Special Rapporteur has continued to concentrate his efforts on responding to specific allegations of human rights violations under the terms of Human Rights Council resolution 6/12, in which the Council mandated the Special Rapporteur to receive and exchange information from all relevant sources, including Governments, indigenous peoples and their communities and organizations, on alleged violations of the human rights and fundamental freedoms of indigenous peoples.

20. As in previous years, complaints received by the Special Rapporteur have related to common issues that affect indigenous peoples throughout the world, including the denial of the rights of indigenous peoples to their lands, territories and

natural resources; violations of the right to consultation and to free, prior and informed consent, especially in regard to natural resource extraction or the eviction of indigenous communities; threats or violence against indigenous individuals and communities, including human rights defenders; issues related to the recognition of indigenous justice systems; and the situation of indigenous peoples in isolation.

21. In several cases, particularly in relation to specific situations in Argentina, Cambodia, Canada, Chile, India, Kenya, Panama, Paraguay, Peru, Uganda and the United Republic of Tanzania, the Special Rapporteur has produced a series of observations and recommendations on actions that States can take to address the situations involved. These observations and recommendations are based on information that the Special Rapporteur has received from indigenous peoples and other stakeholders, as well as on the responses provided by States concerned and on research conducted by the Special Rapporteur. The Special Rapporteur's goal is to identify measures to address the issues in a way that promotes a spirit of cooperation between the State and the indigenous peoples concerned. The Special Rapporteur will continue to engage with States about these specific situations, and he hopes that the dialogue carried out to date has been useful both for the Governments concerned and for the indigenous peoples involved in these situations.

22. As in the previous period, the Special Rapporteur carried out visits to countries as part of his examination of specific situations. In June 2010, the Special Rapporteur visited Guatemala to discuss the implementation of the principles of consultation with indigenous peoples in the country, particularly in relation to extractive industries, with a special focus on the situation of indigenous peoples affected by the Marlin mine in the municipalities of Sipacapa and San Miguel Ixtuhuacán. He has also investigated allegations of specific cases of violations of human rights as part of his country visits and issued specific reports on those issues that he felt warranted a separate analysis. This was the case with his examination of the Northern Territory Emergency Response legislation in Australia.

23. The Special Rapporteur would like to thank those States that have replied to his communications; these responses have contributed greatly to building a positive dialogue between Governments, indigenous peoples and other actors. He would also like to urge those States that have not submitted responses to do so.

III. Development with identity and culture

24. The theme of the ninth session of the Permanent Forum was indigenous peoples' development with culture and identity, and during his annual presentation to the Permanent Forum, the Special Rapporteur offered the following observations on this important issue, in light of his work and experiences carrying out his mandate.

25. The right to development is a right of all peoples, including indigenous peoples. The Declaration on the Right to Development (General Assembly resolution 41/128 of 4 December 1986) affirms in its article 1 that "development is an inalienable human right" of "every human person and all peoples". While indigenous peoples have the right to develop in common with the broader communities and societies in which they live, there are often particular concerns relating to indigenous peoples that must at all times be taken into account with regard to development initiatives that affect them. These concerns stem from the

extreme disadvantages that indigenous peoples have typically faced across a range of social and economic indicators: the dispossession of lands and natural resources; their historical exclusion from State decision-making; and their aspirations to maintain and transmit to future generations their distinct identities and cultures.

A. Economic and infrastructure development projects that affect indigenous peoples

26. The Special Rapporteur sees two broad areas of concern that can be identified when considering development programmes affecting indigenous peoples. The first relates to policies and initiatives aimed at the development of the economy or infrastructure of the State generally and that are said to benefit the people of the State as a whole, but that have negative effects on indigenous peoples. These include development programmes involving the extraction of natural resources and mega-projects such as the construction of dams and transportation facilities on indigenous peoples' territories.

27. The problems arising from such development projects affecting indigenous peoples are present in a wide range of situations that the Special Rapporteur regularly encounters in connection with his activities of monitoring and responding to situations of concern to indigenous peoples around the world. These problems are often related to the absence of any adequate mechanisms of participation of indigenous peoples in the design and implementation of the development initiatives, the absence of adequate mitigation measures that take into account indigenous environmental and cultural concerns, the failure to recognize indigenous property rights in lands and resources and the absence of equitable sharing in the benefits of the development projects. In this regard, article 32 of the Declaration, with its call for the free and informed consent of indigenous peoples prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources, provides an important template for avoiding these problems in the development context.[1]

28. However, at the same time, article 32 affirms that "indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources". Thus, the Declaration's guarantees under article 32 are aimed not only at avoiding the harm to indigenous peoples that might result when development projects are carried out without their consent, but also at advancing indigenous peoples' own development interests along with those of the larger society, with the objective that indigenous peoples genuinely influence decision-making regarding the development of the countries in which they live.

[1] Similarly, the Inter-American Court of Human Rights has held in a case involving the Saramaka people of Suriname that "regarding large-scale development or investment projects that would have a major impact within Saramaka territory, the State has a duty, not only to consult with the Saramaka, but also to obtain their free, prior, and informed consent, according to their customs and traditions", *Saramaka v. Suriname*, judgment of 28 November 2007, para. 134.

B. Development projects aimed specifically at benefiting indigenous peoples

29. A second area of concern has to do with those development initiatives by States, often pursued with the backing of international actors, which are targeted specifically at indigenous peoples and their social and economic conditions. Many initiatives by States are aimed at the important objective of reducing the disadvantage that indigenous peoples experience in social and economic spheres. In his various reports assessing the human rights situations of indigenous peoples in various countries, the Special Rapporteur has provided specific details of examples of such Government policies and programmes that are targeted at key issues associated with indigenous peoples' development, including those related to indigenous health, education and poverty reduction.

30. Despite many positive advancements, the Special Rapporteur has observed the need for States to incorporate into programmes of this type a more integrated approach to addressing the development of indigenous peoples, one that aims not just to secure for them their social and economic well-being, but in doing so to advance their self-determination and their rights to maintain their distinct cultural identities, languages and connections with their traditional lands. In this regard, article 23 of the Declaration states that "indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions."

C. Enhancing indigenous self-determination in the development process

31. Self-determination in the development process is a matter of basic human dignity, for indigenous peoples as for all others. Enhancing indigenous self-determination has also been shown to be conducive to successful practical outcomes, and indigenous people who make their own decisions about development have been shown to consistently fare better than indigenous people who do not. In this connection, it is imperative that States and international actors seek to decidedly fold into development programmes the goal of increasing indigenous self-determination and control over development programmes.

32. As experience shows, advancing indigenous self-determination requires a practical orientation around specific objectives. A number of specific objectives must thus be pursued to enhance indigenous self-determination in the development process. Among these is the objective of enhancing indigenous education and skills capacity in relevant areas. Indigenous peoples are rich in valuable knowledge, but are often lacking in the skills and levels of education necessary to themselves engage and participate in the various components of development programmes and projects that affect them in the modern world. Many State programmes which are oriented at improving the education of indigenous peoples should take into account such a perspective. The Special Rapporteur has made specific and detailed recommendations as to how such programmes should be consolidated and

strengthened in practice, in his reports regarding the situation of indigenous peoples in various countries. It should also be noted that the Expert Mechanism, in its first report to the Human Rights Council (A/HRC/10/56), offered important observations concerning the right of indigenous peoples to education, and United Nations agencies, including UNESCO, have likewise provided valuable input on this issue.

33. Beyond increasing indigenous peoples' educational opportunities in general, States and the international community play an important role in the promotion, training and capacity-building necessary to allow indigenous peoples to adequately understand, design and implement development activities within or affecting their communities, including in relation to large-scale natural resource extraction and infrastructure projects. While many development projects in various countries include programmes for some training and employment opportunities for affected indigenous communities, in most cases this training does not envision indigenous people as potential engineers, business administrators, environmental analysts, lawyers or other professionals with the skills necessary for the execution of the projects at the managerial level. Ensuring professional training for indigenous peoples that allows their full involvement in the design and delivery of development-related activities should be part of any vision for development as it concerns them.

34. Further, it is apparent from experiences worldwide that the capacity of indigenous peoples to successfully pursue their own development priorities requires the strengthening of their own institutions and self-government structures. This will empower them to take control of their own affairs in all aspects of their lives and to ensure that development processes are aligned with their own cultural patterns, values, customs and world views. In this regard, the Special Rapporteur echoes the statements of indigenous leaders around the world about the need for indigenous peoples themselves to continue to strengthen their own organizational and local governance capacities, in order to meet the challenges faced by their communities with respect to development, including complex decisions regarding natural resource extraction and other major development projects on their lands.

35. Related to capacity-building and the strengthening of self-government, indigenous peoples should be provided with the opportunity to participate as equal partners in the development process when both their particular interests and the interests of the larger societies of which they form a part are implicated. In his experience working together with State officials and representatives of private industry, the Special Rapporteur has observed, in general, a lack of consideration of options for indigenous peoples to be real partners in development activities. Real partnership would require indigenous peoples to be able to genuinely influence decisions concerning the development activities, fully participate in their design and implementation and directly benefit from any economic or other benefits that are derived from them.

36. The Special Rapporteur thus emphasizes that indigenous peoples must be allowed the opportunity to continue to progress and improve decision-making concerning development on their own terms, and to remedy any shortcomings through their own forms of internal regulation and accountability. States and other actors should take care to avoid conditioning their development assistance for indigenous communities on predetermined outcomes that are presumed by the outsiders to be the correct outcomes. In other words, indigenous peoples must be

allowed the opportunity to make mistakes, to learn from those mistakes and to build ever greater capacity and wisdom to advance in their own development objectives and choices about the future.

IV. The right to participation

37. The Expert Mechanism on the Rights of Indigenous Peoples is in the process of developing a report on one of the core issues concerning indigenous peoples — the right of indigenous peoples to participation in decision-making affecting them. Throughout his work, the Special Rapporteur has noticed a widespread lack of adequate implementation of this right and a need for orientation about the measures necessary to fulfil this right. The Expert Mechanism's study will be instrumental in providing guidance on this important issue and the Special Rapporteur commends the Expert Mechanism for the work that it already has under way as reflected in its progress report (A/HRC/EMRIP/2010/2).

38. As part of his ongoing coordination with the Expert Mechanism, and during a regional consultation in January 2010 in Chiang Mai, Thailand, organized by the Asia Indigenous Peoples Pact in collaboration with the Expert Mechanism and OHCHR, the Special Rapporteur provided input based on his experiences for the study on the right of indigenous peoples to participation in decision-making. Further, at the most recent session of the Expert Mechanism in Geneva in July 2010, the Special Rapporteur provided some further observations aimed at assisting the Expert Mechanism in its study, and he presents these observations to the General Assembly here.

A. General content and character

39. The right of indigenous peoples to participate in decision-making is both rooted in other basic human rights and essential to the effective enjoyment of those rights. A number of basic human rights principles underpin the right to participate and inform its content. These include, among others, principles of self-determination, equality, cultural integrity and property. Correspondingly, a lack of effective participation by indigenous peoples in decision-making concerning matters that affect them can have a direct impact on, and in many cases directly undermine, their effective enjoyment of other basic human rights, including those just mentioned as well as the rights to health and education.

40. As outlined by the Expert Mechanism in its recent progress report, the right to participation is present in a wide range of international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples, International Labour Organization Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights, as well as regional human rights instruments, including the American Convention on Human Rights. In particular, as highlighted in the Expert Mechanism's progress report, the United Nations Declaration on the Rights of

Indigenous Peoples contains more than 20 provisions affirming indigenous peoples' right to participate in decision-making on a wide range of matters.[2]

B. External and internal dimensions of the right to participation

41. Given the broad nature of the right to participate in decision-making, it is helpful to identify the normative framework for understanding this right in its various dimensions. In its progress report, the Expert Mechanism has identified and elaborated on both external and internal dimensions of the right to participation.

42. The Special Rapporteur sees three principal aspects of the dimension involving decision-making by actors that are external to indigenous communities and related concerns.

43. A first aspect of the external dimension has to do with the participation of indigenous peoples in the broader public life of the State, as promoted by article 5 of the Declaration, and is related to the right of all citizens to political participation. This aspect of participation in decision-making within spheres extending beyond indigenous communities is mostly, though not entirely, a matter of the rights of indigenous individuals. As affirmed in particular by the Inter-American Court of Human Rights in the case of *Yatama v. Nicaragua*, the right of indigenous peoples to participate in the broader public life of the State also includes a collective element, which requires States to enact special measures to ensure the effective participation of indigenous peoples within State political structures and institutions.[3]

44. A second aspect of the external dimension relates to the participation of indigenous peoples in decision-making by State actors about measures that affect indigenous peoples' rights or interests in particular, beyond those rights or interests shared by the people of the State generally. In this regard, article 18 of the Declaration states that "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights". This right includes a corollary duty of States to consult with indigenous peoples in matters that affect their rights and interests in order to obtain their free, prior and informed consent as recognized, especially, by article 19 of the Declaration. The Special Rapporteur devoted his second annual report to the Human Rights Council to the issue of the duty of States to consult with indigenous peoples (A/HRC/12/34), and has continued to address this issue in various aspects of his work.

45. A third aspect of the external dimension of the right of participation is the involvement of indigenous peoples in decision-making in the international arena. This aspect is often overlooked, but remains an important component of indigenous peoples' right to self-determination. Indigenous peoples have achieved historic accomplishments at the international level, including in the processes leading to the adoption of the Declaration in 2007 and to the establishment of the three United Nations mechanisms with specific mandates concerning indigenous issues. Indigenous peoples have a greater voice at the international level than ever before. Still, much remains to be done to continue to encourage and allow for the active involvement of indigenous peoples in the development of international standards

[3] A/HRC/EMRIP/2010/2, para. 8, arts. 3-5, 10-12, 14, 15, 17-19, 22, 23, 26-28, 30-32, 36, 38, 40.

and programmes that concern them, including within the United Nations and other international and regional institutions.

46. Apart from its external aspects, the internal dimension of the right to participation in decision-making relates to indigenous peoples' exercise of autonomy and self-government, and to maintaining their own legal and justice systems. This dimension of the right includes a corresponding duty of the State to allow indigenous peoples to make their own decisions concerning their internal matters, and to respect those decisions. In this regard the Declaration recognizes in article 4 the right of indigenous peoples to "autonomy or self-government in matters relating to their internal and local affairs". It is apparent from experiences worldwide that the effective exercise of the right to autonomy and self-government will require a strengthening of indigenous peoples' institutions and self-government structures, in order that they may genuinely take control of their own affairs in all aspects of their lives and to ensure that matters affecting them are aligned with their own cultural patterns, values, customs and world-views.

C. Practical implementation of the right

47. Beyond identifying the normative framework for understanding the right of participation in its various dimensions, it is important to develop workable strategies for implementation of the right. To that end it is useful to take stock of the problems indigenous peoples are facing in exercising the right to participation in its various dimensions, as well as to identify good practices and lessons learned. The Special Rapporteur offers here a few examples of these, which he has encountered in his work. More detailed relevant observations and specific recommendations are included in various of his reports concerning country situations and cases of alleged human rights violations.

48. Regarding the first aspect of external participation, through his work the Special Rapporteur has observed that the participation of indigenous peoples in the broader public life of the State is inadequate and generally not proportional in relation to their populations in most countries where indigenous peoples live. Nevertheless, there are numerous examples of efforts by States to increase indigenous political participation through targeted measures such as guaranteed seats in legislative bodies, redistricting and the creation of special indigenous advisory bodies. Still, continued steps need to be taken to ensure greater indigenous participation in the process of defining State policy and administering Government programmes so that the voices of indigenous peoples and individuals will at all times be heard at all levels of public and political decision-making. The Special Rapporteur has explored several examples of problems encountered and solutions advanced in this connection in his reports examining the situations of indigenous peoples in different countries.

49. With respect to the participation of indigenous peoples in decision-making about measures that specifically affect their rights or interests — the third aspect of the right — it is evident that adequate consultation mechanisms are lacking throughout the world and that, in particular, indigenous peoples do not adequately control their territories in many cases, even when lands are demarcated and registered. The Special Rapporteur has observed numerous cases in which indigenous peoples are not provided sufficient opportunity to participate in decision-

making concerning natural resource extraction activities taking place within their traditional lands. Given the pervasiveness of this problem in countries throughout the world, the thematic section of the Special Rapporteur's 2010 annual report to the Human Rights Council (A/HRC/15/37) is dedicated to examining issues related to extractive industries operating in indigenous territories.

50. Furthermore, in nearly all of the countries he has visited, the Special Rapporteur has heard reports of a lack of adequate participation of indigenous peoples in the design, delivery and monitoring of programmes and policies that specifically affect them, at all levels. The Special Rapporteur would like to stress that enhancing indigenous peoples' control over decision-making that affects them has been shown to be conducive to successful practical outcomes, and there are numerous examples of successful indigenous-controlled programmes in place to address issues of indigenous health, education and other areas of concern, in ways that are culturally appropriate and adapted to local needs. Measures should be taken to support these programmes and increase the opportunity for indigenous peoples to provide services to their own communities.

51. Regarding the third aspect of external participation, participation at the international level, the Special Rapporteur notes that there is strong participation of indigenous peoples at the sessions of the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples. Furthermore, over the past two years the Special Rapporteur has observed increased interaction by indigenous peoples with his mandate and notes a heightened engagement by indigenous groups with all the relevant international mechanisms. The formation of the Inter-Agency Support Group on Indigenous Issues is an example of an initiative for strengthening cooperation among United Nations agencies and mainstreaming indigenous issues within the United Nations system, which could also provide an important forum for indigenous peoples' participation at the international level.

52. At the same time, indigenous peoples continue to face impediments to their active participation at the international level, such that there is still a lack of adequate participation of indigenous peoples in conferences and meetings where matters of vital importance to them — such as the environment and traditional knowledge — are being discussed and decided. Additionally, indigenous peoples often are excluded from or have inadequate participation in decision-making by international financial institutions about large-scale development projects that affect them. Potential reforms within international institutions and platforms of decision-making that affect indigenous peoples' lives should be closely examined; certainly, there is room to strengthen education and capacity-building of indigenous peoples in this regard. Financial and administrative support should be maintained and expanded as necessary to ensure that indigenous peoples can participate effectively in international forums.

53. Finally, with respect to indigenous decision-making concerning internal matters, while there are some noteworthy examples of indigenous autonomy and self-government throughout the world, continued efforts by States are needed to promote and consolidate legal recognition and accommodation of indigenous institutions of self-governance. Additionally, there is a need for indigenous peoples themselves to continue to endeavour to strengthen their capacities to control and manage their own affairs and to participate effectively in all decisions affecting them, in a spirit of cooperation and partnership with government authorities at all

levels, as well as a need to address any issues of social dysfunction within their communities.

V. Further comments on the Declaration on the Rights of Indigenous Peoples

54. As noted in the Special Rapporteur's first report to the General Assembly, the Declaration on the Rights of Indigenous Peoples is now the principal instrument of the United Nations system for measuring the human rights conditions of indigenous peoples around the world and identifying action needed to address those conditions. The resolution reauthorizing the mandate of the Special Rapporteur specifically directs the Special Rapporteur to promote the Declaration as a key aspect of his mandate (Human Rights Council resolution 6/12, para. 1(g)).

A. Moving beyond formal endorsement of the Declaration

55. The Special Rapporteur has on various occasions, including in his first report to the General Assembly (A/64/338) and his first report to the Human Rights Council (A/HRC/9/9), offered comments on the Declaration on the Rights of Indigenous Peoples. Additionally, the Special Rapporteur continually draws the attention of States to the standards provided in the Declaration in his country reports and his analysis of specific situations and concerns. At recent sessions of the Expert Mechanism and the Permanent Forum, the Special Rapporteur offered further views on the Declaration in the light of the programmes of each of these bodies. The present observations expand on some of the views the Special Rapporteur has expressed in the past regarding the Declaration, focusing on recent developments, matters of ongoing concern, and in particular on the need for decided and concerted action for its implementation.

56. Since the adoption of the Declaration in 2007, the very few States that voted against the Declaration have changed or are in the process of reassessing their positions, as noted in paragraphs 12 and 13 above. Furthermore, Colombia and Samoa, two of the States that abstained in the vote on the Declaration, made public statements last year expressing their commitment to the principles expressed in the instrument. The expressions of all these countries undoubtedly contribute to the further strengthening of the international commitment to advancing the rights of indigenous peoples that the Declaration represents.

57. While strengthening of support for the Declaration is to be celebrated, it is all too apparent that a great deal remains to be done to see the objectives of the Declaration become a reality in the everyday lives of the indigenous peoples of the world. Today, the Declaration serves more as a reminder of how far there is to go in bringing justice and dignity to the lives of indigenous peoples than a reflection of what has actually been achieved on the ground. Indeed, historical patterns of oppression continue to manifest themselves in ongoing barriers to the full enjoyment of human rights by indigenous peoples. It is feared that the wide gap between the Declaration and its effective implementation will persist, leading to a certain complacency and acceptance of that condition by dominant actors and within the United Nations system. This cannot be allowed to happen.

58. The Declaration provides a detailed list of norms that constitute the minimum standards for the survival, dignity and well-being of indigenous peoples around the world (article 43). As the Special Rapporteur has observed previously, the Declaration does not affirm or create special rights that are unique to indigenous peoples in a fundamental sense, but rather it elaborates upon fundamental human rights of universal application in the specific cultural, historical, social and economic circumstances of indigenous peoples. Thus, implementation by States simply requires a commitment to upholding the basic standards of human rights, taking into account the specific circumstances of indigenous peoples and the collective dimensions of the exercise of those rights by them. Undoubtedly the adoption of the Declaration by the General Assembly was a momentous event, and recent statements of formal support for the Declaration are to be welcomed. But these achievements cannot be seen as the final or principal goals. Rather, it is the faithful implementation of these rights that must be the focus of concerted attention.

B. The need for a commitment to the Declaration that is not obscured by references to its character as a non-legally binding instrument

59. A starting point for the effective implementation of the Declaration is a firm commitment by States and the United Nations system to its rights and principles that is free from vague assertions that the Declaration is not obligatory. On too many occasions State and other actors attempt to diminish the normative weight of the Declaration by describing it as an instrument that is not "legally binding". As a resolution of the General Assembly, the Declaration by its nature is not, in and of itself, a legally binding instrument, given the authority of the General Assembly under the Charter of the United Nations only to make "recommendations", except in regard to membership, budgetary and administrative matters. But understanding the normative significance and legal obligations related to the Declaration does not end there.

60. First, whatever its legal significance, the Declaration has a significant normative weight grounded in its high degree of legitimacy. This legitimacy is a function not only of the fact that it has been formally endorsed by an overwhelming majority of United Nations Member States, but also the fact that it is the product of years of advocacy and struggle by indigenous peoples themselves. The Declaration is the result of a cross-cultural dialogue that took place over decades, in which indigenous peoples took a leading role. The norms of the Declaration substantially reflect indigenous peoples' own aspirations, which after years of deliberation have come to be accepted by the international community.

61. The Declaration's wording, which has been endorsed by Members States, explicitly manifests a commitment to the rights and principles the Declaration embodies. It is simply a matter of good faith that States adhere to that expression of commitment to the norms that indigenous peoples themselves have advanced.

62. Furthermore, even though the Declaration itself is not legally binding in the same way that a treaty is, the Declaration reflects legal commitments that are related to the Charter, other treaty commitments and customary international law. The Declaration builds upon the general human rights obligations of States under the Charter and is grounded in fundamental human rights principles such as non-discrimination, self-determination and cultural integrity that are incorporated

into widely ratified human rights treaties, as evident in the work of United Nations treaty bodies. In addition, core principles of the Declaration can be seen to be generally accepted within international and State practice, and hence to that extent the Declaration reflects customary international law.

63. In sum, the significance of the Declaration is not to be diminished by assertions of its technical status as a resolution that in itself has a non-legally binding character. Implementation of the Declaration should be regarded as political, moral and, yes, legal imperative without qualification.

C. Minimum practical steps towards implementation

64. The Special Rapporteur offers here a few comments on minimum steps that he considers to be required to move forward with implementation of the Declaration beyond its formal endorsement by States.

65. First, State officials as well as indigenous leaders should receive training on the Declaration and the related international instruments, and on practical measures to implement the Declaration. Along with this training, seminars and conferences should be organized at national and local levels to bring together State officials and indigenous leaders to develop strategies and initiatives for implementation, including measures to address historical grievances, in the spirit of cooperation and reconciliation that the Declaration represents.

66. Additionally, States should engage in comprehensive reviews of their existing legislation and administrative programmes to identify where they may be incompatible with the Declaration. This would include a review of all laws and programmes touching upon indigenous peoples' rights and interests, including those related to natural resource development, land, education, administration of justice and other areas. On the basis of such a review, the necessary legal and programmatic reforms should be developed and implemented in consultation with indigenous peoples.

67. States should be committed to devoting significant human and financial resources to the measures required to implement the Declaration. These resources will typically be required for the demarcation or return of indigenous lands, the development of culturally appropriate educational programmes, support for indigenous self-governance institutions and the many other measures contemplated by the Declaration.

68. The United Nations system and the international community should develop and implement programmes to provide technical and financial assistance to States and indigenous peoples to move forward with these and related steps to implement the Declaration, as a matter of utmost priority. In some instances existing United Nations and international cooperation programmes may have to be reformed to align with the goals and objectives of the Declaration.

69. To varying degrees these minimum steps to implement the Declaration are already being undertaken by some States and in some cases with the backing of United Nations agencies or international cooperation programmes. It is important that such initiatives take root much more broadly, and that experiences are shared to strengthen these initiatives.

VI. Conclusions and recommendations

70. **The Special Rapporteur offers the following conclusions and recommendations on the basis of his examination of the substantive issues discussed above, including his examination of these issues through the various aspects of his work, as reflected in his several reports to the Human Rights Council to date.**

A. Development with identity and culture

71. **The right to development is a right of all peoples, including indigenous peoples. In the light of the extreme disadvantages that indigenous peoples have typically faced across a range of social and economic indicators, there are particular concerns relating to indigenous peoples that must be taken into account with regard to development initiatives that affect them.**

72. **There are two broad areas of concern that can be identified when considering development programmes affecting indigenous peoples. The first area of concern relates to policies and initiatives aimed at the development of the economy or infrastructure of the State generally and that are said to benefit the people of the State as a whole, but that have actual or potential negative effects on indigenous peoples. These include, inter alia, development programmes involving the extraction of natural resources and mega-projects such as the construction of dams and transportation facilities on indigenous peoples' territories. Such development programmes and projects, despite their specific effects on indigenous peoples and their territories, are often undertaken without adequate consultation with them or without their free, prior and informed consent.**

73. **The second area of concern relates to development initiatives targeted specifically at reducing the disadvantages experienced by indigenous peoples and improving their social and economic well-being. These initiatives all too often fail to properly incorporate indigenous peoples in the design and delivery of the programmes in a way that advances their self-determination and their rights to maintain their distinct cultural identities, languages and connections with their traditional lands.**

74. **Within both of these areas of concern, there is a need for Governments to decidedly fold into development programmes the goal of increasing indigenous self-determination. Enhancing indigenous self-determination is a matter of basic human dignity as well as being conducive to successful practical outcomes. Among the objectives to be pursued in this regard are the following:**

(a) **Enhancing indigenous education and skills in relevant areas so that indigenous peoples themselves can engage and participate in the various components of development programmes and projects that affect them in the modern world, including natural resource extraction projects;**

(b) **Strengthening indigenous peoples' own institutions and self-government structures to empower them to take control of their own affairs in all aspects of their lives and to ensure that development processes are aligned with their own cultural patterns, values, customs and world-views;**

(c) Providing indigenous peoples with the opportunity to participate as equal partners in the development process when both their particular interests and the interests of the larger societies of which they form a part are implicated, allowing them to genuinely influence decisions concerning development activities, fully participate in their design and implementation and directly benefit from any economic or other benefits that are derived from them;

(d) Allowing indigenous peoples the opportunity to continue to progress and improve decision-making concerning development on their own terms, and to remedy any shortcomings through their own forms of internal regulation and accountability. In this regard, indigenous peoples should be allowed the opportunity to make mistakes, to learn from those mistakes and to build ever-greater capacity and wisdom to advance in their own development objectives and choices about the future.

B. The right to participation

75. In the present report, the Special Rapporteur offers some initial observations on the right to participation for indigenous peoples, focusing on identifying a normative framework for understanding this right. He will continue to address this issue and provide further observations on the practical implementation of this right in future reports.

76. Participation in decision-making is a foundational right that at its core provides the basis for the enjoyment of the full range of human rights. Furthermore, a number of basic human rights principles underpin the right to participation and inform its content, including, among others, principles of self-determination, equality, cultural integrity and property. In understanding the right to participation in the context of indigenous peoples, it is useful to distinguish between the external and internal dimensions of the right.

77. The Special Rapporteur sees three principal aspects of the external dimension. A first aspect has to do with the participation of indigenous peoples in the broader public or political life of the State. Almost invariably, the participation of indigenous peoples in the broader public life of the State is inadequate and not proportional in relation to indigenous populations. While there are numerous examples of efforts by States to increase indigenous political participation through various measures, continued steps need to be taken to ensure greater indigenous participation in the public sphere. In this regard, special measures may be required to ensure that indigenous peoples can participate on equal footing in the public and political life of States.

78. A second aspect of the external dimension relates to the right of indigenous peoples to participate in decision-making about measures that affect their rights or interests in particular. This aspect corresponds to the duty of States to consult with indigenous peoples in matters that affect their rights and interests, in order to obtain their free, prior and informed consent.

79. In his reports, the Special Rapporteur has provided numerous observations and recommendations regarding specific examples of problems related to the implementation of this second aspect of the external dimension of

participation. In many cases, the Special Rapporteur has observed a lack of adequate participation of indigenous peoples in the design, delivery and monitoring of programmes, policies and projects that affect them, at all levels. Moreover, it is evident that throughout the world, indigenous peoples are not adequately consulted, nor is their consent obtained, when decisions affecting their rights or interests are made.

80. A third aspect of the external dimension of the right to participation is the involvement of indigenous peoples in decision-making in the international arena. Although indigenous peoples have achieved historic accomplishments at the international level, continued efforts need to be made to ensure the active involvement of indigenous peoples in the development of all international standards and programmes that concern them. Potential reforms within international institutions and platforms of decision-making that affect indigenous peoples' lives should be closely examined, and measures should be taken or strengthened to provide financial and other support to enable indigenous peoples to participate effectively at the international level.

81. The internal dimension of the right to participation relates to indigenous peoples' exercise of autonomy or self-government. This dimension of the right includes a corresponding duty of the State to allow indigenous peoples to make their own decisions concerning their internal matters, and to respect those decisions. States should make continued efforts to promote and consolidate legal recognition and accommodation of indigenous institutions of self-governance, in order for indigenous peoples genuinely to take control of their own affairs in all aspects of their lives and to ensure that matters affecting them are aligned with their own cultural patterns, values, customs and world-views.

82. Additionally, indigenous peoples themselves must continue to endeavour to strengthen their capacities to control and manage their own affairs and to participate effectively in all decisions affecting them, in a spirit of cooperation and partnership with government authorities at all levels.

C. Further comments on the Declaration on the Rights of Indigenous Peoples

83. Adoption of the Declaration on the Rights of Indigenous Peoples by the General Assembly was a momentous event, and recent statements of formal support, or movement towards support, by the few States that originally voted against its adoption are to be welcomed. But these achievements cannot be seen as the final or principal goals. Rather, it is the faithful implementation of these rights that must be the focus of concerted attention.

84. It is all too apparent that a great deal remains to be done to see the objectives of the Declaration become a reality in the everyday lives of the indigenous peoples of the world. Today, the Declaration serves more as a reminder of how far there is to go in bringing justice and dignity to the lives of indigenous peoples than a reflection of what has actually been achieved on the ground.

85. Implementation of the Declaration should be regarded as a political, moral and legal imperative without qualification, within the framework of the

human rights objectives of the Charter of the United Nations. The significance of the Declaration is not to be diminished by assertions of its technical status as a resolution that in itself has a non-legally binding character.

86. **The Declaration has a significant normative weight grounded in its high degree of legitimacy. This legitimacy is a function of not only the fact that it has been formally endorsed by an overwhelming majority of United Nations Member States, but also the fact that it is the product of years of advocacy and struggle by indigenous peoples themselves.**

87. **Furthermore, the Declaration builds upon fundamental human rights and principles, such as non-discrimination, self-determination and cultural integrity, which are incorporated into widely ratified human rights treaties. In addition, core principles of the Declaration can be seen to be generally accepted within international and State practice, and hence to that extent the Declaration reflects customary international law.**

88. **Certain minimum steps are required to implement the Declaration, as outlined in paragraphs 12 and 13 above. To varying degrees, these minimum steps to implement the Declaration are already being taken by some States and in some cases with the backing of United Nations agencies or international cooperation programmes. It is important that such initiatives take root much more broadly, and that experiences are shared to strengthen these initiatives.**